

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

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Title: Batch# 10 AMS Guidance

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Policy and Guidance: (check all that apply)

- ☐ Policy
- ☒ Guidance
- ☐ Procurement Forms, Templates and Samples
- ☐ Real Property Templates and Samples
- ☐ Procurement Clauses
- ☐ Real Property Clauses
- ☐ Other FAST Tools and Resources

Summary of Change:

Updated guidance with administrative changes and substantive changes to correspond with the changes made in the procurement forms, templates, samples, and tools and resources documents. T3.8.8 the basic authority for the Declaration of Taking has changed from the Director of Real Property Management Organization, APM-1 to the Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1.

Reason for Change:

Ensure compliance with documents in the procurement forms, templates, samples, and tools and resources sections of FAST and existing AMS policy/guidance to provide for efficient and effective guidance for the use by the AAQ community.

Development, Review, and Concurrence: AAP-110, AAP-100, AAQ, ACG

Target Audience: Acquisition workforce

Briefing Planned: No

ASAG Responsibilities: None

Section / Text Location:

Procurement Guidance/T3.8.8
Procurement Guidance/T3.10.1
Procurement Guidance/T3.10.3
Procurement Guidance/T3.10.4
Procurement Guidance/T3.10.6

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links:

<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.8.pdf>
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.1.pdf>
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.3.pdf>
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.4.pdf>
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.10.6.pdf>

Attachments: Redline and final documents.

Other Files: N/A

Redline(s): See following pages.

Section Revised: T3.8.8 – Real Property Special Categories of Contracting

Procurement Guidance - (~~7/2021~~9/2021)

T3.8.8 Real Property Special Categories of Contracting Added 9/2020

A Real Property Purchases Added 9/2020 Revised 9/2021

B Leases Added 9/2020

1 Lease Authority Added 9/2020 Revised 9/2021

2 Types of Leases and Applicability Added 9/2020 Revised 9/2021

3 Firm Term Leases Added 9/2020 Revised 9/2021

4 Holdover Tenancy Added 9/2020 Revised 9/2021

5 Rent Payment Structure Added 9/2020 Revised 9/2021

6 Tenant Improvements Added 9/2020 Revised 9/2021

7 Alterations and Improvements Added 9/2020 Revised 9/2021

8 Capitalization of Leases and Leasehold Improvements Added 9/2020

C No Cost Land On-Airport Memorandum of Agreement (MOA) Added 9/2020 Revised 9/2021

D Utilities Added 9/2020

1 General Added 9/2020 Revised 9/2021

2 Energy Cooperative Programs Added 9/2020 Revised 9/2021

3 Utility Energy Service Contracts Added 9/2020

E Other Real Property Acquisitions Added 9/2020

1 Right of Entry Added 9/2020

2 Easements Added 9/2020 Revised 9/2021

3 Surveys/Appraisals/Title Added 9/2020 Revised 9/2021

F Condemnation Revised ~~4/2021~~9/2021

G Disposal of Real Property Added 9/2020

H Conveyance of Real Property Added 9/2020

1 Conveyance by Transfer Agreement Added 9/2020

2 Conveyance Obligated by Lease Clauses Added 9/2020

3 Abandonment of Leasehold Improvements Added 9/2020

I Outgrants Added 9/2020

1 General Added 9/2020 Revised 9/2021

2 Maximum Term Added 9/2020 Revised 9/2021

3 Cost Structure Added 9/2020 Revised 9/2021

4 Termination Rights Added 9/2020 Revised 9/2021

5 Transferability Added 9/2020

6 Proceeds from Outgrants Added 9/2020 Revised 9/2021

J Housing Added 9/2020 Revised 9/2021

~~K Appendices—K Procurement Forms~~ Added 9/2020 Revised 9/2021

~~1 Appendix—On Airport Land Memorandum of Agreement (MOA) Template~~ Added 9/2020

~~2 Appendix—Acquisition of Real Property by Eminent Domain—Procedure Guide for the FAA~~ Added 9/2020

~~3 Appendix—Condemnation Procedures Checklist~~ Added 9/2020

[L Procurement Samples Added 9/2021](#)

[M Procurement Templates Added 9/2021](#)

[N Procurement Tools and Resources Added 9/2021](#)

[O Appendix Added 9/2020 Revised 9/2021](#)

[1 Acquisition of Real Property by Eminent Domain- Procedure Guide for the FAA
Added 9/2020 Revised 9/2021](#)

T3.8.8 Real Property Special Categories of Contracting ~~-Added 9/2020~~ Revised 9/2021

A Real Property Purchases ~~-Added 9/2020~~ Revised 9/2021

- 1 **Authority.** Pursuant to 49 USC § 106 (n), ~~the~~ FAA is authorized to purchase real property. Title to real property purchases shall be held by the Government of the United States.
- 2 **Lease versus Purchase Analysis.** A lease versus purchase analysis must be made for all real property purchases and ~~lease renewals. The~~ succeeding leases. FAA should only purchase real property interests that are in the best interest of ~~the~~ FAA, and at fair and reasonable prices. The lease versus purchase analysis is used to determine the acquisition strategy that provides the best value to ~~the~~ FAA. If cost is not a determining factor for real property acquisitions and a landowner is unwilling to allow FAA use of the property or demands unreasonable lease terms that forces a condemnation proceeding, a lease versus purchase analysis is not required.

~~The~~ FAA should only purchase real property when one or more of the following exist:

- 1) It is economically more beneficial to own and manage the property;
 - 2) There is a long-term need for the property; or
 - 3) When otherwise in the best interest of the FAA.
- 3 **Real Property Purchase Determination.** To determine whether the purchase is in the best interest of or most advantageous to ~~the~~ FAA, the following factors should be considered by the requiring service organization:
 - 1) Whether the site will contribute to economy and efficiency in construction, maintenance, and operation of the individual building/structure;
 - 2) How the proposed site relates to the Government's total space needs in the community;
 - 3) Maximum utilization of Government-owned land (including excess land) whenever it is adequate, economically adaptable to requirements and properly located;
 - 4) A site adjacent to or in the proximity of an existing Federal building that is well located and is to be retained for long-term occupancy;

- 5) The environmental condition of proposed sites prior to purchase. The sites must be free from contamination, unless it is otherwise determined to be in the best interest of the Government to purchase a contaminated site (e.g., reuse of a site under an established “Brownfields” program).
- 6) Purchase options to secure the future availability of a site;
- 7) All applicable location policies in 41 CFR § 102-83; and
- 8) Availability of funding.

B Leases Added 9/2020

1 Lease Authority Added 9/2020 Revised 9/2021

General. The ~~FAA~~ Administrator ~~of the Federal Aviation Administration~~ is authorized by 49 U.S.C. Section 40110 (b)(2)(A) to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. The Administrator’s authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options. ~~The Administrator has delegated leasing authority to the FAA Acquisition Executive, who further delegated the authority by issuing warrants to real estate COs.~~

~~The~~ FAA has authority to enter into "firm-term" leases without violating the Anti-Deficiency Act. See AMS Guidance T3.8.8.1.A.3 for additional information on Firm Term Leases.

2 Types of Leases and Applicability Added 9/2020 Revised 9/2021

- a. ***New leases*** are defined as leases with new terms and conditions and new lease contract numbers, applicable for either a new requirement or to replace an existing expiring lease in a new location.
- b. ***Succeeding leases*** are secured to provide for the FAA continued occupancy of the current premises at the end of a lease term without a break in tenancy. They establish new terms and conditions and have new lease contract numbers. Such a lease would generally be used where acceptable new locations are not identified, or where acceptable locations are identified but a cost-benefit analysis indicates that award to an offeror other than the current Lessor will result in substantial relocation costs or duplication of costs to the FAA, and the FAA cannot expect to recover such costs through competition. A Single Source succeeding lease must be documented in accordance with AMS Guidance T3.2.2.4.
- c. ***Superseding leases*** are defined as new leases that replace existing leases prior to its expiration. The existing lease is terminated simultaneously, effective with the commencement of the superseding lease. ~~The~~ FAA executes superseding leases to replace existing leases when the FAA needs numerous or detailed modifications to the premises that would substantially change

the existing lease, or where better terms are available in a market. Superseding leases follow the non-competitive single-source procedures and are given new lease contract numbers. A Single Source ~~succeeding~~^{superseding} lease must be documented in accordance with AMS Guidance T3.2.2.4.

- d. **Renewal Options** are pre-defined options within an existing lease that may be exercised by the CO prior to the expiration of the current lease in order to stay in the existing location. The lease contract number remains the same.

3 Firm Term Lease Approval ~~Added 9/2020~~^{Revised 9/2021}

- a. **General.** Firm term lease approval is required when ~~the~~ FAA cannot terminate or cancel the lease for a period exceeding 365 days and is contractually committed to rental payments beyond that period. (For additional information on real property termination rights, see AMS Guidance T3.10.6.B Termination of Real Property Contracts). Generally, ~~the~~ FAA discourages ~~the~~ use of firm terms; however, the CO may award a lease with a firm term when it is in the agency's best interest. ~~Situations where such use may be considered include, but are not limited to,~~ space leases requiring funds for significant tenant improvements which must be amortized over the term of the lease, and instances of limited competition or single source procurements where, despite negotiations, the agency has no viable alternative to meet the agency's needs. Prior to awarding any lease with a firm term, the CO, in coordination with the requiring line of business, must obtain FAA Acquisition Executive (FAE) approval.
- b. **Justification.** If the CO determines ~~that~~ a firm term is the only option to secure FAA's real property needs, the CO must coordinate with the requiring line of business and request a justification to award a firm term lease. The justification must include the following:
- Evidence that the acquisition team performed sufficient market research and analysis in accordance with AMS Guidance T3.2.1.2 for FAA's real property needs;
 - A rational basis, and the supporting evidence, ~~as to why another site is not feasible~~ and a firm term is the only option to meet real property needs; and
 - An analysis of potential lease costs and/or cost savings associated with awarding a firm term lease.
- c. **Approval and Execution.** Prior to executing the firm term lease, the firm term justification, including the award decision document (Negotiator's Report) and lease as supporting documentation, must be submitted for concurrence and approval. The firm term justification must have written concurrence from the Office of Chief Counsel, Chief of the Contracting Office, Director of Aviation Property Management, Director of Budgets and Programs, and final approval from the Federal Acquisition Executive (FAE). This approval acknowledges the agency's commitment to a firm term lease, including future budget year requirements. The approval must be included in the real property lease file.

4 Holdover Tenancy ~~Added 9/2020~~^{Revised 9/2021}

a. Holdover Tenancy

A holdover tenancy is created when ~~the~~ FAA continues to occupy leased premises after the lease term has expired. It is ~~the~~ FAA's policy to avoid holdovers to the extent that it is possible and to limit the use of holdover clauses in leases.

b. Holdover Clauses

Holdover clauses are either limited or indefinite in duration. Holdover clauses of indefinite duration should be limited to mission critical land acquisitions or for space leases housing mission critical safety equipment. When using a holdover clause, the CO must document his or her rationale in the award decision document (Negotiator's Report).

1. Land

Due to the long service life of NAS facilities as well as the cost of installation and overall impact to other components of the NAS, the CO will incorporate and negotiate a holdover clause for land leases.

2. Space

The CO may negotiate a holdover clause for space leases when it is in the best interest of ~~the~~ FAA. In negotiating a space holdover clause, the CO will consider the following: (1) FAA's intent for the space lease (whether the space is determined to be "mission critical" (i.e., locations supporting the safety of the airspace)); (2) the competitive environment for the space; (3) FAA's space improvement needs; and (4) potential risks to FAA if the lease fails to include a holdover clause. If the CO determines that a holdover clause is necessary for the requisite space, the CO must document the justification in the award decision document (Negotiator's Report) and must have a rational basis.

c. FAA Holdover Tenancy Obligations

During the holdover period, the CO must continue to negotiate a new lease, or determine whether to compete the requirement, even when considering a condemnation action. ~~The~~ FAA must continue to make payments at the rate established in the expired lease while in holdover. Any difference in lease rental payments negotiated in the new lease will be settled and paid as part of the new lease consideration.

5 Rent Payment Structure ~~Added 9/2020~~Revised 9/2021

- a. Set forth below is the order of Agency preference of rent structures for all new or succeeding cost leases to be negotiated by COs. ~~COs~~ shall negotiate the rent structure of leases, including any supplemental lease agreements that extend or modify the lease term or payment, as follows and will ~~document his/her~~document their rationale within the award decision document (Negotiator Report):

1. **Fixed Rent** means that the rent amount and the time at which it is required to be paid are fixed and determinable under the terms of the lease agreement as of the lease date. This is ~~the~~ FAA's preferred rent structure.
2. **Step-up Rent** establishes clearly defined future rent increases at set times throughout the life of the lease. Step-up rents are meant to protect the landlord from the risks that inflation or a rising market present for a long-term lease.
3. **FAA Standard Operating Costs Escalator (CPI)/Tax Rent Adjustment** requires changes in the rental amount in future years for space leases that cannot be calculated in advance because the CPI and property tax rates change annually. In order to avoid budget shortfalls, the CO shall insert an annual maximum "not-to-exceed" cap on any rent or lump sum increases. ~~This~~ can be stated as a not-to-exceed dollar amount or as a not-to-exceed percentage change. The annual maximum cap will be determined by the CO based on prevailing economic and market conditions and inserted in the standard Operating Costs Escalator clause and the Tax Adjustment clause. For real property contracts, the Cost of Living Index found in the U.S. Department of Labor Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, will be incorporated into the fixed price amount and paid in accordance with the terms of the contract. The National CPI must be used only. The tax increase is applied proportionally to the percentage of FAA's occupancy.
4. **Other rent adjustment clause:** The CO may consider an alternate cost structure proposed by the offeror. Use of an alternate rent adjustment clause requires careful review to ensure:
 - 1) that the method proposed by the offeror to calculate adjustments in rent is readily understood;
 - 2) the proposed lease clause is clearly written and can be calculated in the future by ~~the~~ FAA;
 - 3) the rent adjustment clause will contain a not-to-exceed cap; and
 - 4) the rent adjustment clause cannot cause FAA to exceed budget limitations.

Prior to incorporating an alternate adjustment clause into the lease, the CO must obtain written approval, on a case-by-case basis, from the Real Estate Group Manager and from the appropriate Regional, Center, or Headquarters Counsel.

- b. If the lessor is unwilling to negotiate a fixed rent, then the CO, prior to lease award, must notify the service organization and the appropriate budget office, in writing, that the proposed lease will contain a cost structure that will result in rent adjustments in future years and receive concurrence from the budget office prior to execution of the lease agreement~~...~~.

6 Tenant Improvements ~~Added 9/2020~~ Revised 9/2021

a) *Definitions*

1. ***Cold Shell*** is a building with an unfinished interior that lacks heating, ventilation and air conditioning (HVAC) and usually has no existing lighting, ceilings or walls included in the space but may have fully functioning core (electrical closets, mechanical rooms, elevator lobbies or restrooms).
2. ***Tenant Improvement*** refers to alterations to the interior of the building to meet the functional demands of the tenant. Tenant improvements (TIs) are the components, finishes, and fixtures that take leased real property from the “warm lit shell” condition to a finished, usable condition. -The resulting space is complete, meets applicable building codes, and meets the service organization’s functional needs.
3. ***Tenant Improvement (TI) Allowance***. The TI allowance is the amount of money offered to ~~the~~ FAA by the Lessor to refresh or bring prospective space up to a finished usable condition which may be included in the offered rental rate. The amount depends on many factors, including, but not limited to, the length of the term of the lease and the total amount of square footage of the space. The TI allowance is typically a dollar amount, per square foot, paid entirely by the Lessor.
4. ***Warm Lit Shell*** is a commercial or residential building with a minimally finished interior, usually with ceilings, lighting, plumbing, heating and cooling (HVAC), interior walls (painted or unpainted), electrical outlets, elevators, rest rooms, and a concrete floor. A warm lit shell is considered ready to lease and ready for tenant improvements (TI's).

b) *Tenant Improvements*. Some typical TIs include, but are not limited to, the following:

1. Electrical wiring and outlets;
2. Telephone and data jacks and wiring;
3. Carpeting or flooring;
4. Painting;
5. Plumbing fixtures;
6. Doors;
7. Window treatments; and
8. Thermostats.

c) *Usage of Tenant Improvement Allowance*. ~~The~~ FAA, at its sole discretion, will make all decisions as to the usage of the TI allowance. ~~The~~ FAA will use all or part of the tenant improvement allowance and return to the Lessor any unused portion of the tenant improvement allowance in exchange for a decrease in rent. -For any build out costs above the TI allowance, the service organizations must pay for the overage in buildout costs with a lump-sum payment.

d) *Tenant Improvement Payment Options*.

- 1) *Amortization of Tenant Improvements.* For occupancies where ~~the~~ FAA funds the TI allowance, the TI amount expended is amortized in Rent. Term adjustments may be made for a specific occupancy or service organization. There are two rules for limiting amortization terms for TIs:
 - a. The amortization term must not exceed the economic life of the improvements.
 - b. The amortization term must not exceed the term of the Lease.
- 2) *Lump Sum.* The service organization may make a lump-sum payment for tenant improvements, in lieu of amortization. -Lump-sum payments effectively lower or replace the TI allowance. - If the service organization elects to pay for tenant improvements via lump sum payment, the service organization must confirm availability of funds prior to execution of the lease.
- e) *Tenant Improvement Associated Costs.* The TI allowance shall cover all or a portion of the cost of the design and build out of the leased real property in accordance with ~~the~~ FAA's approved Design Intent Drawings (DID). If ~~the~~ FAA build out costs exceed the TI allowance, the Lessor may recover such costs in accordance with AMS Clause 6.~~545.1-1~~ 545.1-1 "Lessor's Recovery of Tenant Improvement Costs in Excess of the Allowance." Some TI costs include, but are not limited to:
 - 1) Lessor's administrative costs;
 - 2) General contractor fees;
 - 3) Subcontractor's profit and overhead costs;
 - 4) Lessor's profit and overhead;
 - 5) Design costs; and
 - 6) Other associated project fees necessary to prepare construction documents and to complete the tenant improvements. (It is the Lessor's responsibility to prepare all documentation (working/construction drawings, etc.) required to receive construction permits. No costs associated with the building shell shall be included in the tenant improvement price proposal.)
- f) *Tenant Improvements and Termination.* If ~~the~~ FAA determines that termination of the lease is in the best interest of the Government and the tenant improvement costs are amortized over the life of the lease, ~~the~~ FAA shall pay an amount based on the unamortized balance of the tenant improvement allowance as of the first day of the month the lease is terminated, as described in AMS Clause 6.~~555.1-2~~ 555.1-2 "Lessor's Recovery of Tenant Improvement Allowance in the Event of Termination." (See T3.10.6.B "Termination of Real Property Contracts")

7 Alterations and Improvements ~~Added 9/2020~~ Revised 9/2021

A lease may be modified for purposes of making alterations to or improvements of, real property. The Lessor's costs of alterations or improvements may be amortized over the term of the lease, paid by lump-sum payment, or other methods determined appropriate by the CO. All information related to the scope of alterations and improvements, associated costs, agreed upon timeline and any other necessary information must be outlined within the Supplemental Lease Agreement.

1.) Alterations

In leased real property, to minimize potential liabilities and restoration costs, it is normally in ~~the~~ FAA's best interest to have the Lessor perform alterations on the property, thereby limiting any liability on the part of ~~the~~ FAA.

Alterations performed by the Lessor should be at fair and reasonable costs. The CO must make a fair and reasonable determination by obtaining 1) a formal appraisal, 2) construction data, 3) cost to build publications, and/or 4) an independent government cost estimate. The determination should be documented within the Negotiator's Report.

2.) Improvements

~~The~~ FAA can make permanent improvements to leased real property under the provisions of the lease agreement. The ability to make permanent improvements using a third party is governed by 1.) 49 USC Section 44502 (a)(5) and the decision by the Comptroller General B-239520 (8/16/90). Any permanent improvements to leased real property must comply with the requirements of the Davis- Bacon Act. (see AMS Guidance T3.6.2.A.5 Construction Contracts / Davis Bacon Act)

Like with alterations, it is normally in ~~the~~ FAA's best interest to have the Lessor perform improvements on the property, thereby limiting liability on the part of ~~the~~ FAA. Improvements should be evaluated for their value using FAA accounting practices. The CO must make a fair and reasonable determination by obtaining 1) a formal appraisal, 2) construction data, 3) cost to build publications, and/or 4) an independent government estimate. The determination should be documented within the Award Decision Document (Negotiator's Report).

If the Lessor is unwilling or unable to complete the improvements, and the property is leased for no or nominal consideration, then ~~the~~ FAA can exercise its authority under 49 USC Section 44502(a)(5) provided the statutory criteria are met to make the required improvements on the leased real property.

8 Capitalization of Leases and Leasehold Improvements Added 9/2020

Capitalization is the classification of fixed assets as long-term investments rather than current operating expenses. The purpose of capitalization is to match incurred costs related to the acquisition, development, or construction of Property, Plant & Equipment (PP&E) with the accounting period in which assets were used. Therefore, capitalized asset and improvement costs are not expensed when incurred, but instead are deferred (capitalized) and allocated over the asset's estimated useful life through depreciation expense (for tangible capitalized assets) or amortization expense (for intangible capitalized assets). For more information on FAA capitalization requirements related to leases and

leasehold improvements, please see the FAA Financial Manual Vol. 8, Property, Plant and Equipment, Chapter 8.6 Leases and Leasehold Improvements.

C No Cost Land On-Airport Memorandum of Agreement (MOA) ~~Added 9/2020~~Revised 9/2021

The On-Airport Land MOA template ~~in Appendix 1~~ **must** be used for the acquisition of land on an airport only when the airport sponsor has a current Airport Improvements Project (AIP) Grant. The Contracting Officer can obtain a list of airports that have current AIP grants through the FAA Regional Airport Division online Grant History Look Up tool at faa.gov.

If facilities need to be added or deleted from the MOA, the CO will modify the contract to incorporate the revised list ensuring that the effective date of the change is listed on the updated list of facilities. The CO will provide written notice to the airport sponsor and retain the latest copy of the list of facilities in the contract file. ~~-~~See also AMS Guidance T3.8.1 Agreements, Cooperative Agreements, Gifts & Requests for additional information on MOAs.

D Utilities ~~Added 9/2020~~

1 General ~~Added 9/2020~~Revised 9/2021

~~The~~FAA acquires utility services, (electric, gas, and water), in support of facilities constructed, operated, and maintained by ~~the~~FAA. The Contracting Officer (CO) will procure utility services.

Utility services should be obtained from sources of supply, which are most advantageous to the Government in terms of economy, efficiency, reliability or service. Although single source is generally the method used to acquire utility services, ~~the~~FAA will acquire utilities competitively whenever practical and reasonable. ~~-~~ Competition can only occur within designated areas that are deregulated and open to competition. There is a potential possibility for substantial savings when acquiring utilities competitively, since the Government has ability to select lowest cost provider.

The utility acquisition process will be conducted following the best commercial business practices, in a fair and equitable manner, while complying with all applicable regulations. A primary factor to consider when acquiring utility services competitively is the reliability of the service, as interruptions to utility service would result in serious losses to ~~the~~FAA and threatens the safety of the NAS.

2 Energy Cooperative Programs ~~Added 9/2020~~Revised 9/2021

Large FAA facilities, such as Air Route Traffic Control Centers, may qualify for energy cooperative programs. Under these cooperative programs, the energy supplier requests ~~the~~FAA ~~to~~ utilize its own generators, during peak demand periods, instead of utility company supplied power. ~~The~~ FAA then receives a rebate for assisting the power company. Generally, two types of energy cooperative programs exist:

1. Peak-shaving agreement refers to leveling out peaks in electricity use by industrial and commercial power consumers. These are financially motivated, and are generally discouraged for FAA contracts. Environmental Protection Agency rules stringently regulate engine generators (E/G)s that operate under peak-shaving agreements or other non-emergency uses. The CO will ensure new or renewed utility contracts do not include provisions for peak-shaving agreements unless approved by an FAA environmental professional.
2. Demand response agreements serve to prevent interruptions due to extreme demand (rolling blackouts). These agreements are allowable and do not affect the emergency status of an E/G as long as the hours of operation are limited to no more than 15 hours per year.

3 Utility Energy Service Contracts Added 9/2020

Under a Utility Energy Service Contract (UESC), FAA may contract with a local servicing utility for technical services and/or up-front project financing for energy efficiency, water conservation, and renewable energy investments at one or more FAA facilities. For additional information on UESC, please refer to AMS Guidance T3.6.3.A.15.

E Other Real Property Acquisitions Added 9/2020

1 Right of Entry Added 9/2020 Revised 9/2021

“Right of Entry” is a form of license, typically granted to perform surveys and/or exploration work prior to acquisition or lease of land. The CO will ensure that a "right of entry" license or permit to the property for any purpose has been obtained from the land owner prior to ingress by an FAA employee or any of its agents. Legal counsel will be consulted for the proper action to take if the landowner refuses to grant a "right of entry" permit. Entry onto private property without appropriate rights may constitute trespass.

2 Easements Added 9/2020 Revised 9/2021

~~The~~ FAA may acquire other real property interests such as easements in order to meet the agency’s needs. An easement is an interest in real property that affords ~~the~~ FAA the right of limited use of another person’s real property. An easement may be exclusive or non-exclusive and may be perpetual or expressly limited in duration. Some of examples of easements ~~that the~~ FAA may obtain are (1) a right-of-way, (2) a right of entry for a stated purpose, (3) a right to the support of land and buildings, (4) a right of light and air, (5) a right to place or keep utilities on another person’s property, (6) a right to the perpetual maintenance of drainage structures, (7) a right to allow reconstruction of a driveway during construction, and (8) a right to do some act that would otherwise constitute a nuisance.

The CO will negotiate the appropriate type of easement with the landowner to obtain the necessary real property interest to meet the agency’s need. Legal will advise the CO for the proper action to

take if the landowner refuses to grant the easement. Entry onto private property without appropriate rights may constitute trespass.

3 Surveys/Appraisals/Title Added 9/2020 Revised 9/2021

a. General

Simplified purchase methods apply real property related services to include surveys, title, and appraisal services that are established market prices or where prices can be determined fair and reasonable. (See AMS Guidance 3.2.2.5 Commercial and/or Simplified Purchase Methods for additional information on how to acquire real property related services.)

b. Surveys

For any real property acquisition, it is necessary to obtain an up-to-date survey that accurately describes the area of each property interest that the agency seeks to acquire. An accurate survey should define all the property ~~the~~ FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc. It will be essential for negotiations with the landowner (to depict the exact area of the interests the agency seeks to acquire), and is also a necessary part of the condemnation assembly that will be sent to the Department of Justice if the agency chooses to acquire by condemnation. The CO will refer to Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), for additional information concerning surveys.

In cases involving multiple or overlapping property interests, (i.e. land, access, air rights, mineral, etc.), it is advised that the CO obtain separate legal descriptions for each interest, and that all the interests should then be depicted on one single plat. The service organization (SO) should review and approve the estates, property descriptions and plats for technical accuracy and to ensure that operational requirements are being met by the proposed acquisition.

c. Appraisals

1. *General.* An appraisal is a formal, usually written, statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. An appraisal is an estimate of the current value based upon, and supported by, an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the appraised property.
2. *Just Compensation.* Just compensation is the full and fair monetary equivalent for the property taken for public use. An appraisal is used to determine the fair market rent, and value or just compensation for purchase of a specific property. The just compensation amount for the real property must not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

3. *Certifications/Standards.* The CO will use a State Licensed or Certified appraiser with a Member Appraisal Institute (MAI) or Senior Real Property Appraiser (SRPA) national designation. Appraisals must comply with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions. Appraisals should be performed in accordance with generally accepted appraisal standards as set by the Appraisal Standards Board of the Appraisal Foundation.
4. *Appraisal Statement of Work (SOW).* The CO sends the appraiser an appraisal request letter along with an Appraisal SOW. The Appraisal SOW provides property information needed for the appraisal, such as:
 - 1) Legal description of property;
 - 2) Ownership data/title information ;
 - 3) Results of the EDDA;
 - 4) Results of the EIS, EA or FONSI, for new real property; and
 - 5) Any other data that could affect the property's value.

Note: Attached to the SOW is a certification for the appraiser to sign regarding his/her service to ~~the~~ FAA.

5. *Appraisal Thresholds.* The CO will determine the appropriate type of appraisal method to be used. An appraisal should be accomplished for each land procurement where costs are involved, with the following exceptions:
 - 1) Real property, where the CO estimated "just compensation" is less than \$2,500.00; or
 - 2) A real property donation, where the owner releases ~~the~~ FAA from its obligation to appraise the property.

A value finding appraisal (opinion of value) can be used for properties estimated to be \$2,500.00 to \$5,000.00.

6. *Review appraiser.* The review appraiser is a separate specialty and not just an appraiser who reviews an appraisal. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between ~~the~~ FAA's real property valuation needs and the appraiser. The review appraiser is responsible for ensuring that the appraisal report and its conclusions are reasonably supported by market information and complies with agency regulations, as well as with Federal and professional appraisal standards. The review appraiser has the same licensing/certification requirements as an

appraiser. Appraisal review reports must comply with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

d. Title

At the outset of the acquisition process, the CO will obtain and review current title evidence of the property, generally in form of a title insurance commitment. The CO will refer to the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), for additional information concerning title matters.

The title evidence should identify all interests such as leases, easements, liens and other recorded documents that affect the property. These interests will be listed as exceptions on the title insurance policy, and must be further researched to determine their impact on the conveyance of good title to the United States. Some title exceptions, such as the rights of a mortgage holder, can usually be extinguished at, or prior to, closing.

Researching, clearing title defects, and providing an opinion as to the sufficiency of title are generally the CO's responsibility. The CO will discuss any title problems that are discovered with the title company as well as with the appropriate Regional or Center Counsel or Headquarters Counsel. The Chief Counsel has been delegated authority from the Department of Justice to pass on the sufficiency of title to lands being acquired by the agency, by issuing a preliminary opinion of title prior to the acquisition and a final opinion of title afterwards. If title cannot be satisfactorily cleared, condemnation to clear title may prove to be the only recourse. (See AMS T3.8.8.F Condemnation.)

F Condemnation Revised 4/2021/2021

Condemnation is the legal process of acquiring private property for public use or purpose through the government's power of eminent domain. There are two types of condemnation actions ~~that the~~ FAA may file: (1) declaration of taking (DT) cases, and (2) "straight," or complaint-only cases.

- a. *Declaration of Taking.* In most cases, ~~the~~ FAA uses a DT when it acquires property by eminent domain since the majority of FAA acquisitions involve property ~~that the~~ FAA currently leases and which already supports FAA facilities. In a DT case, ~~the~~ FAA takes title to the estate as soon as the case is filed and deposits an estimated amount of just compensation is deposited in the registry of the court. Once a DT case is filed, ~~the~~ FAA is committed to the condemnation, and the land cannot be given back to the landowner without the landowner's consent. Moreover, ~~the~~ FAA is committed to paying whatever amount of just compensation the court awards for the taking.
- b. *Straight.* In a "straight" or complaint-only condemnation case, ~~the~~ FAA does not take title until after the condemnation case is fully adjudicated and the court determines the amount of just compensation owed for the estate. At that point, ~~the~~ FAA can decide based on the price whether it wants to acquire the estate, or whether it wants to abandon the condemnation because the price is too high.

Condemnation usually is not used until all attempts to reach a mutually satisfactory agreement through negotiations have failed. If the CO determines that initiating condemnation proceedings is in the best interest of ~~the~~ FAA, the CO must coordinate with Legal counsel and follow Appendix 21 - Acquisition of Real Property by Eminent Domain - Procedure Guide for ~~the~~ FAA.

G Disposal of Real Property Added 9/2020 Revised 9/2021

~~The~~ FAA is responsible for promoting effective use of FAA real property assets, as well as the disposal of real property that is no longer mission-critical to ~~the~~ FAA. There are two sources of authority under which ~~the~~ FAA may dispose of real property:

1. Pursuant to 49 USC 40110, ~~the~~ FAA has the authority to dispose of airport and airway property and technical equipment used for the special purposes of ~~the~~ FAA for adequate compensation and the amount so received shall:
 - a. be credited to the appropriation current when the amount is received;
 - b. be merged with and available for the purposes of such appropriation; and
 - c. remain available until expended.
2. The second source of authority is through the General Services Administration (GSA) and is governed by the Federal Property Administrative Services Act of 1949, as amended. This Act authorizes the Administrator of GSA to dispose of real property at all federal agencies unless a specific agency has independent statutory authority to dispose of their own properties.

H Conveyance of Real Property Added 9/2020

1 Conveyance by Transfer Agreement Added 9/2020

Conveyance is the transfer of ownership for direct or indirect consideration. The real property assets to be conveyed must be screened for any environmental or safety issues that may require mitigation prior to conveyance.

2 Conveyance Obligated by Lease Clauses Added 9/2020

- a. To satisfy the terms of a restoration clause in a lease, a CO may negotiate a transfer of property ownership to the lessor in lieu of restoring the premises to its original condition.
- b. A conveyance under these circumstances may also include negotiated fair and reasonable payments by either party to the other in order to reach an equitable settlement.

- c. If the CO decides to invoke the non-restoration clause contained in a standard lease, the government is under no obligation to restore the premises to its original condition and ownership is passed to the lessor at the time the site is abandoned.

3 Abandonment of Leasehold Improvements Added 9/2020

1. FAA-owned improvements to buildings or building space held under lease are frequently made to promote the health, welfare and security of government employees or to enhance NAS operations carried out at the site.
2. Such improvements may be abandoned upon final termination of the lease in accordance with non-restoration clause contained therein only if removal of the improvements is impractical and abandonment poses no risk to the public.
3. The CO will advise the appropriate service organization of the lease termination and any leasehold improvements that have been retired and recorded in the automated property systems.

Any improvements being considered for abandonment must be screened for environmental or safety issues that may require mitigation prior to abandonment.

I Outgrants Added 9/2020

1 General Added 9/2020 Revised 9/2021

In accordance with to 49 U.S.C. 106(n), ~~the~~ FAA may grant written permission to another government agency, or to a third party, to utilize its underutilized real property. This grant of permission is referred to as an outgrant. ~~The~~ FAA may utilize its outgrant authority for unutilized or underutilized FAA leased or owned real property assets. The service organization that is responsible for the property must affirm that the proposed outgrant (1) is aligned with Agency policy, strategic plan, and mission and (2) it will not have a negative impact on FAA's mission. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the CO must obtain, from the service organization a written statement that the outgrant will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased FAA liability. The service organization also will provide the CO with any required approvals from the Outgrant Approval Workflow (ATP NPI, ATO Spectrum, ATO SSC, ATO EOSH, APM-200) and any supporting documentation and required stipulations that are necessary to be included in the outgrant agreement. Prior to awarding an outgrant, the CO will coordinate the outgrant ~~agreement~~contract and any supporting documentation for Legal review.

~~The~~ FAA issues outgrants to the following types of entities:

1. *Outgrant with Other Federal Entities (Permits).* ~~Outgrant agreements~~Outgrants with other Federal entities include non-permanent granting by FAA of the use of FAA real property assets to other Federal agencies by means of a permit. ~~The~~ FAA real property asset is not transferred but is retained in FAA's real property inventory. The purpose is to satisfy another Federal entity's requirement to use an existing FAA-owned building, land, or structure.
2. *Outgrant with Private Sector and Public Entities (Licenses).* ~~The~~ FAA may issue an outgrant to private or public entities for a specified period of years. ~~The~~ outgrant allows ~~the~~ FAA to enter into an agreement with a private or public entity to use an underutilized asset, which leverages the asset into a more productive asset, maximizing asset utilization. Private or public entities will invest its own capital to construct, renovate, or improve the real property and to operate the asset in a manner consistent with the outgrant ~~agreement~~contract.

2 Maximum Term ~~Added 9/2020~~Revised 9/2021

Outgrants, new or succeeding, may not have a term in excess of 5-years. If ~~the~~ FAA does not own the underlying land or building/structure but is leasing it from another party, the term of an outgrant cannot exceed the remaining term of the underlying FAA contract or 5 years, whichever is less.

3 Cost Structure ~~Added 9/2020~~Revised 9/2021

The CO will structure the cost of outgrants in the following order of preference:

1. Based upon fair market value along with any additional services and overhead provided to grantee;
2. Based upon ~~the~~ FAA cost and overhead only; or
3. A no cost outgrant that specifies the non-monetary consideration of both parties (requires the appropriate service organization approval). The value of the non-monetary consideration will be of equivalent or greater value than the fair market value waived. The CO will not waive the services and related overhead costs of the outgrant if ~~the~~ FAA is providing more than minimal services to the grantee.

4 Termination Rights ~~Added 9/2020~~Revised 9/2021

Outgrants, new or succeeding, must contain ~~the~~ FAA's right to terminate at-will. Termination rights by the grantee are allowed but should require sufficient notice to ~~the~~ FAA to inspect the property and to determine if any restoration is required by the grantee.

5 Transferability ~~Added 9/2020~~

Outgrants are not transferable. Outgrants are issued exclusively to the grantee for a limited time and for a specific purpose.

6 Proceeds from Outgrants ~~Added 9/2020~~Revised 9/2021

Pursuant to 49 USC 40110(a)(3), proceeds collected by ~~the~~ FAA from outgrants are required to be credited to the Treasury which shall be:

1. credited to a separate account established in the Treasury and made available for FAA activities;
2. available immediately for expenditure but only for congressionally authorized and intended purposes; and
3. remain available until expended.

J Housing ~~Added 9/2020~~ Revised 9/2021

The FAA Housing program provides housing for FAA employees supporting the National Airspace System (NAS) who are working in remotely located areas where commercial housing is not available. ~~The~~ FAA must follow OMB Circular A-45 for the acquisition, management and disposal of FAA owned or leased housing facilities. This is applicable to all Lines of Businesses (LOB) and organizational elements having a requirement for and using FAA housing quarters.

K ~~Appendices~~ Procurement Forms ~~Added 9/2020~~ Revised 9/2021

~~1 Appendix—On-Airport Land Memorandum of Agreement (MOA) Template~~ ~~Added 9/2020~~

~~ON AIRPORT LAND~~
~~MEMORANDUM OF AGREEMENT~~
~~Between~~
~~UNITED STATES OF AMERICA~~
~~DEPARTMENT OF TRANSPORTATION~~
~~FEDERAL AVIATION ADMINISTRATION~~
~~And~~
~~[INSERT AIRPORT(S) NAME]~~

~~SECTION 6.1: OPENING~~

~~6.1.1-1 Agreement Preamble~~

This Agreement is made and entered into by the ~~<insert Airport's Sponsor official name>~~, hereinafter referred to as "Airport", for itself, its successors and assigns, and the Federal Aviation Administration, hereinafter referred to as the "FAA" or "the Government".

~~For purposes of this MOA, the terms "contractor," "airport," and "lessor" are interchangeable. Also, the terms "contract," "agreement, and "lease" are interchangeable.~~

6.1.3-1 MOA Witnesseth

~~Whereas, the parties listed above have entered into an Airport Improvement Grant Agreement; and~~

~~Whereas, the parties listed above have entered into an agreement providing for the construction, operation, and maintenance of FAA-owned navigation, communication and weather aids for the support of Air Traffic Operations; and~~

~~Whereas, the parties consider it desirable to work in cooperation with each other in the technical installation and operation of air navigational aids; and~~

~~Whereas, both parties agreed the establishment, operation, and maintenance of systems for air traffic control, navigation, communication, and weather reporting is in the primary interest of safety and direct support of the ongoing operation of the <insert Airport's official name> Airport.~~

~~<Whereas, this agreement supersedes or succeeds <Lease No. DTFAXX-XX-L-XXXXX> and all other previous agreements between the parties for the property described in this document.>~~

Now, therefore, the parties mutually agree as follows:

SECTION 6.2: TERMS

6.2.1-1 MOA Purpose

It is understood and agreed that the use of the herein described premises, known as <insert Airport's official name> Airport, shall be related to the FAA's activities in support of Air Traffic Operations.

6.2.5-4 Terms and Conditions

It is mutually understood and agreed that the Airport requires FAA navigation aid facilities in order to operate their business and that the FAA requires navigation, communication and weather aid facilities at the Airport in order to support Air Traffic Operations. Thus, in the interest of both parties it is hereby agreed that the Airport will allow the FAA to construct, operate, and maintain FAA-owned navigation, communication and weather aid facilities in areas on the Airport that have been mutually determined and agreed upon for the term commencing on [insert start date] and continuing through [insert expiration date]. The FAA can terminate this agreement, in whole or part at any time by giving at least thirty (30) days' notice in writing.

A. Together with a right-of-way for ingress to and egress from the premises; a right-of-way for establishing and maintaining pole lines or underground lines for extending electrical power and/or telecommunications lines to the premises; including a right-of-way for subsurface power, communication and/or water lines to the premises; all rights-of-way to be over the area referred to as [insert Airport's official name], to be routed reasonably determined to be the most convenient to the

~~FAA and as not to interfere with Airport operations. The Airport shall have the right to review and comment on plans covering access and utility rights of way under this paragraph.~~

~~B. And the right to grading, conditioning, and installing drainage facilities, seeding the soil of the premises, and removing all obstructions from the premises that may constitute a hindrance to the establishment and maintenance of navigational aid systems. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.~~

~~C. And the rights to make alterations, attach fixtures, and erect additions, structures or signs, in direct support of the Airport. The Airport shall have the right to review and comment on plans covering work permitted under this paragraph.~~

~~D. And the right to park, without cost, all official and privately owned vehicles used for the maintenance and operation of the air navigational facilities. Parking shall be provided adjacent to the navigational aid facility or as near as possible without interfering with the operation of the Airport.~~

~~6.2.6-1 ——— Consideration (No Cost)~~

~~The Government shall pay the Airport no monetary consideration in the form of rental. It is mutually agreed that the rights extended to the Government herein are in consideration of the obligations assumed by the Government in its establishment, operation and maintenance of facilities upon the premises hereby leased.~~

~~6.2.9 — FAA Facilities~~

~~The FAA facilities covered by this agreement are identified on the most current approved Airport Layout Plan (ALP) and/or other pertinent drawings that are made part of this Agreement by reference and shown on the attached FAA "List of Facilities".~~

~~SECTION 6.3: GENERAL CLAUSES~~

~~3.2.5-1 Officials Not To Benefit~~

~~No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.~~

~~3.10.1-22 ——— Contracting Officer's Representative~~

~~(a) The Contracting Officer may designate other Government personnel (known as the Contracting Officer's Representative) to act as his or her authorized representative for contract administration functions which do not involve changes to the scope, price, schedule, or terms and conditions of the contract. The designation will be in writing, signed by the Contracting Officer, and will set forth the authorities and limitations of the representative(s) under the contract. Such designation will not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.~~

~~(b) The Contractor shall immediately contact the Contracting Officer if there is any question regarding the authority of an individual to act on behalf of the Contracting Officer under this contract.~~

~~6.3.5 Title To Improvements~~

~~Title to the improvements constructed for use by the FAA during the life of this Agreement shall be in the name of the FAA.~~

~~6.3.6 Funding Responsibility for FAA Facilities~~

~~The Airport agrees that any and all Airport requested relocation(s), replacement(s), or modification(s) of any existing or future FAA navigational aid or communication system(s) necessitated by Airport improvements or changes will be at the expense of the Airport. In the event that the Airport requested changes or improvements interferes with the technical and/or operational characteristics of the FAA's facility, the Airport will immediately correct the interference issues at the Airport's expense. Any FAA requested relocation, replacement, or modifications shall be at the FAA's expense. In the event such relocations, replacements, or modifications are necessary due to causes not attributable to either the Airport or the FAA, funding responsibility shall be determined by mutual agreement between the parties, and memorialized in a Supplemental Lease Agreement.~~

~~6.3.18 Non-Restoration~~

~~It is hereby agreed between the parties that, upon termination of its occupancy (due to termination or expiration of the Lease), the Government shall have no obligation to restore and/or rehabilitate, either wholly or partially, the property that is the subject of this Lease, including any holdover period. It is further agreed that the Government may abandon in place any or all of the structures and equipment installed in or located upon said property by the Government during its tenure. Such abandoned equipment shall become the property of the Lessor.~~

~~6.3.18-2 Restoration~~

~~1. The Government shall surrender possession of the premises upon the date of expiration or termination of this Lease. If the Lessor provides written notice, prior to the date of expiration or termination, requesting restoration of the premises, the Government at its option shall within ninety (90) days after such expiration or termination, or within such additional time as may be mutually agreed upon, either:~~

- ~~A. Restore the premises to as good condition as that existing at the time of the Government's initial entry upon the premises under this Lease or any preceding lease (ordinary wear and tear, damage by natural elements and by circumstances over which the Government has no control, excepted) or;~~
- ~~B. The FAA may also elect to Offer abandonment of installed real property improvements in lieu of restoration or some combination of abandonment and restoration as determined by mutual agreement with the owner, so long as it is determined by the RECO to be in the best interests of the Government.~~

~~2. In the event that the Government has to make payment under this clause, such payments will not exceed appropriations available at the time of the restoration in violation of the Anti-Deficiency Act.~~

~~3. Nothing in this Lease may be considered as implying that Congress will, at a later date, appropriate funds sufficient to meet the deficiencies."~~

~~6.3.25 Quiet Enjoyment~~

~~The Lessor warrants that they have good and valid title to the premises, and rights of ingress and egress, and warrants and covenants to defend the Government's use and enjoyment of said premises against third party claims.——~~

~~6.3.28-2 Interference with FAA Operations~~

~~The Airport agrees not to erect or allow to be erected any structure or obstruction of any kind or nature within the Airport's boundaries that the FAA determines may interfere with the proper operation of the facilities installed by the FAA. The FAA and the Airport agree that such action(s) would not be in the best interest of the Airport or the FAA.——~~

~~6.3.33-2 Covenant Against Contingent Fees (MOA)~~

~~The Airport warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover the full amount of the contingent fee.~~

~~6.3.34 RE Anti-Kickback——~~

~~The Anti-Kickback Act of 1986 (41 U.S.C. 51-58), prohibits any person from (1) Providing or attempting to provide or offering to provide any kickback; (2) Soliciting, accepting, or attempting to accept any kickback; or (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.~~

~~6.3.36 Subordination, Nondisturbance and Attornment~~

~~A. The Government agrees, in consideration of the warranties and conditions set forth in this clause, that this contract is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this contract. Based on a written demand received by the RECO, the Government will review and, if acceptable, execute such instruments as the contractor may reasonably request to evidence further the subordination of this contract to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by the contractor if such easement does not interfere with the full enjoyment of any right granted the Government under this contract.~~

~~B. No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this contract so long as the Government is not in default under this contract. Contractor will include in any future mortgage, deed of trust or other security instrument to which this contract becomes subordinate, or in a separate~~

~~non-disturbance agreement, a provision to the foregoing effect. Contractor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the RECO promptly upon demand.~~

~~C. In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the contractor under this contract, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the contract had initially been entered into between such purchasers or transferees and the Government; provided, further, that the RECO and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this contract, or other writings, as shall be necessary to document the foregoing relationship.~~

~~D. None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.~~

~~This clause is required in all real estate contracts except outgrants.~~

~~6.3.37-2 — Notification of Change in Ownership or Control of Land (MOA) —~~

~~If the Airport conveys to another party or parties any interest in the aforesaid land, rights of way thereto, and any areas affecting the premises, the Government shall be notified in writing, of any such transfer or conveyance within 30 calendar days after completion of the change in property rights. Concurrent with the written notification, the Airport's representatives, assignees, or trustees shall provide the Government copies of the associated legal document(s) (acceptable to local authorities) for transferring and/or conveying the property rights.~~

~~6.3.45-4 — RE Contract Disputes (Agreement) —~~

~~All contract disputes arising under or related to this Agreement will be resolved through the FAA dispute resolution system at the Office of Dispute Resolution for Acquisition (ODRA) and will be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17, which are hereby incorporated by reference. Judicial review, where available, will be in accordance with 49 U.S.C. 46110 and will apply only to final agency decisions. A contractor may seek review of a final Government decision only after its administrative remedies have been exhausted.~~

~~All contract disputes will be in writing and will be filed at the following address:~~

~~Office of Dispute Resolution for Acquisition, AGC-70~~

~~Federal Aviation Administration~~

~~800 Independence Avenue, S.W., Room 323~~

Washington, DC 20591

Telephone: (202) 267-3290

~~A contract dispute against the FAA will be filed with the ODRA within two (2) years of the accrual of the lease claim involved. A contract dispute is considered to be filed on the date it is received by the ODRA.~~

~~The full text of the Contract Disputes clause is incorporated by reference. Upon request the full text will be provided by the RECO.~~

~~6.3.47-1 Clearing/Disposing of Debris~~

~~A. The Government shall notify the Airport in writing ten (10) days prior to the start of any clearing of trees and/or brush and tree cuttings.~~

~~B. The Airport grants the Government the right and privilege to enter upon the Airport's land in order to cut, trim, tip, shape and maintain to the maximum height of 5'4" above ground level, any trees situated within the airport boundary and said cutting privilege granted to the Government shall include native grasses, scrub brush, and scrub to trees. Only those trees that are determined by the Government to interfere with the operation and proper function of the Government's facilities will be subject to the Government's granted privilege. Coordination with the Airport will be made prior to any cutting of any selected trees.~~

~~C. The Government agrees to dispose of all grass, brush, and tree cuttings by its contractor. All tree logs, limbs, or branches 2 or more inches in diameter and 5 feet in length, shall be stacked in an area selected by the Airport. The Government's disposal of debris, grass, branches, etc., shall comply with regulatory requirements.~~

~~SECTION 6.4: FINANCIAL CLAUSES- Not Applicable~~

~~SECTION 6.5: DESIGN & CONSTRUCTION CLAUSES- Not Applicable~~

~~SECTION 6.6: GENERAL BUILDING REQUIREMENTS & SPECIFICATIONS CLAUSES- Not Applicable~~

~~SECTION 6.7: SERVICES, UTILITIES, & MAINTENANCE CLAUSES- Not Applicable~~

~~SECTION 6.8: ENVIRONMENTAL & OCCUPATIONAL SAFETY & HEALTH CLAUSES~~

~~6.8.1 Hazardous Substance Contamination~~

~~The FAA agrees to remediate, at its sole cost, all hazardous substance contamination on the FAA facility premises that is found to have occurred as a direct result of the installation, operation, relocation and/or maintenance of the FAA's facilities covered by this contract. The Airport agrees to remediate at its sole cost, all other hazardous substance contamination found on the FAA facility premises. The Airport also~~

agrees to hold the FAA harmless for all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the FAA facility premises that are not directly attributable to the installation, operation and/or maintenance of the facilities.—

~~SECTION 6.9: SECURITY CLAUSES- Not Applicable~~

~~SECTION 6.10: CLOSING~~

~~6.10.1-4 Notices for MOA:~~

All notices/correspondences must be in writing, reference the MOA number, and be addressed as follows:

~~TO THE AIRPORT:~~

~~<Insert Airport's Name>~~

~~<Insert correspondence address>~~

~~<Insert City, State, Zip code>~~

~~TO THE GOVERNMENT:~~

~~Federal Aviation Administration~~

~~Real Estate & Utilities Group, <Insert routing symbol>~~

~~<Insert address>~~

~~<Insert City, State, Zip code>~~

~~6.10.3-4 MOA Signature Block~~

The Airport and the FAA hereby agree to the provisions outlined in this agreement as indicated by the signatures herein below of their duly authorized representative(s). This agreement is effective upon the date of signature by the last party thereof.

[INSERT AIRPORT OWNER'S OFFICIAL NAME]

By: _____

Print Name: _____

Title: _____

Date: _____

UNITED STATES OF AMERICA

DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

By: _____

Print Name: _____

Title: ~~Real Estate Contracting Officer~~

Date: _____

SECTION 6.11- ATTACHMENTS/EXHIBITS/SPECIAL STIPULATIONS
[RECO SHOULD UPDATE/ADD/REMOVE AS NEEDED]

Number	Document Name	Title	Date	Number of Pages
1		MOA-LIST OF FACILITIES		
2				
3				
4				
5				

2L Procurement Samples Added 9/2021

Document Name

M Procurement Templates Added 9/2021

Document Name

N Procurement Tools and Resources Added 9/2021

Document Name

Appendix- Acquisition of Real Property by Eminent Domain - Procedure Guide for the FAA
~~Added 9/2020~~ Revised 9/2021

Acquisition of Real Property by Eminent Domain
A Procedural Guide for the Federal Aviation Administration

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Introduction

A. Overview of Eminent Domain

Eminent domain (also known as condemnation) is an essential attribute of government power. Without this power, a landowner could thwart agency objectives that depend on the acquisition of his property by refusing to sell the property at any price, or by demanding an exorbitantly high price based upon the agency's need for the property.[2] Eminent domain resolves such potential problems by enabling the agency to initiate a proceeding in federal court to acquire title to the property in exchange for "just compensation."

The Fifth Amendment of the Constitution states that "Nor shall private property be taken for public use without just compensation." This language has been interpreted by the Courts to mean that (1) condemnation must be for a public use, and (2) just compensation must be paid for the property taken. The term "public use" has been interpreted liberally by the Courts to mean a use that is rationally related to any valid public purpose or legitimate governmental activity.[3] The term "just compensation" usually means the "fair market value" of the property taken.[4]

There are two types of condemnation actions that may be filed: (1) declaration of taking cases, and (2) "straight," or complaint-only cases. In a declaration of taking case, the agency takes title to the estate as soon as the case is filed and an estimated amount of just compensation is deposited in the registry of the court. Once a declaration of taking case is filed, the agency is committed to the condemnation, and the land cannot be given back to the landowner without the landowner's consent. Moreover, the agency is committed to paying whatever amount of just compensation the court ultimately awards for the taking. By contrast, in a "straight" or complaint-only condemnation case, the agency does not take title until after the condemnation case is fully adjudicated and the court determines the amount of just compensation owed for the estate. At that point, the agency can decide based on the price whether it wants to acquire the estate, or whether it wants to abandon the condemnation because the price is too high.

The FAA almost exclusively uses declarations of taking when it acquires property by eminent domain. This is because the majority of FAA acquisitions involve property that the FAA currently leases and which already contain FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a declaration of taking to acquire immediate title to the property, which permits the agency to continue operating the facility on the property.

B. When Is Condemnation Necessary?

Although the agency is required by statute and agency policy to acquire real property by negotiation and direct purchase whenever possible, there are certain circumstances that necessitate acquisition by condemnation. Examples of situations that typically require condemnation are:

1. The **landowner is unwilling to negotiate or sell at any price** the property or interest therein.

2. The agency and the property owner agree in principle to most of the terms and conditions for direct purchase of the property or interest therein, but are **unable to agree on the price.**
3. An examination of title evidence discloses **title defects** that are too numerous or complex for curative action, or that can only be cured through condemnation proceedings.
4. It is **impossible to locate the owners** of the property or interests therein to be acquired.
5. The property **owners refuse to comply with the terms and conditions** of an executed offer-to-sell agreement.
6. The **owners request that condemnation be used** to acquire title to their property or interests therein, or where owners, such as fiduciaries, states, cities, or other public bodies **are without legal authority to sell** or otherwise dispose of real property or interests therein.

The Pre-Condemnation Process

Outlined below are the initial considerations and steps that should be undertaken by realty specialists contemplating the use of condemnation to acquire property. Note that most of these same steps and considerations would apply to acquisition by purchase as well.

A. Verify the Long-Term Need for the Property/Facility

The FAA uses eminent domain whenever it cannot negotiate a long-term interest or a direct purchase of real property. Given the degree of difficulty, the length of time, and the considerable expense involved in litigating a condemnation action, the FAA seeks to avoid acquisition of non-permanent interests such as short-term leaseholds by condemnation. Rather, the agency encourages the use of condemnation primarily for the acquisition of the permanent fee simple or easement interests. Accordingly, when considering whether condemnation is the appropriate method of acquisition, the realty specialist should first ascertain whether there is a well-established, long-term need for the property that the agency seeks to acquire. The FAA typically acquires property on which a particular facility already exists. The contracting officer (CO) should determine whether there is a long-term need for the particular facility. In order to make this determination, the CO should contact appropriate personnel in the following service organizations: Air Traffic Organization (ATO), Terminal Services, En Route Services, Oceanic Services and Technical Operations, Aviation Safety (AVS), and/or Security and Hazardous Material (ASH) to advise of the agency's intention to acquire the property underlying the facility, and to solicit their feedback about whether there is a long-term need for the facility.

B. Determine the Estate(s) to be Acquired

The CO must next determine what estate(s) should be acquired in order to meet the agency's needs, and then draft language describing such estate(s). The typical long-term interest FAA acquires is fee interest. Depending on the particular needs and circumstances of each acquisition, it may be necessary for the agency to acquire other estates as well. For example, if the acquired

parcel is not accessible by public road, it will be necessary for the agency to acquire an access easement to ensure ongoing access to the facility. Similarly, if the agency plans to build a new facility on the acquired parcel, it may be necessary to acquire a temporary construction easement on adjacent property. In addition to access and construction easements, proper operation of the facility may require the acquisition of restrictive easements on adjacent property, such as limits on nearby tree height or restrictions on residential development.

When drafting the language to describe each estate, the CO should attempt to meet the agency's goals while minimizing encroachment on neighboring property interests whenever possible. For example, the estates taken should exclude all existing easements of record for public roads and highways, public utilities, railroads and pipelines when doing so does not conflict with the agency's needs. As discussed further in Part D below, an examination of the title evidence should reveal whether any such easements exist, while the appropriate Air Traffic Organization personnel should be able to determine whether such easements would interfere with the agency's needs. In cases where the agency must acquire an access easement, the CO should consider drafting the easement so that it is non-exclusive, or so that the easement could be shifted to another location at the landowner's request. All estates should be drafted in a manner that most closely resembles an estate recognized under state law.

C. Obtain an Accurate Survey

For any real property acquisition, it is necessary to obtain an up-to-date survey that accurately describes the area of each property interest that the agency seeks to acquire. An accurate survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc. It will be essential for negotiations with the landowner (to depict the exact area of the interests the agency seeks to acquire), and is also a necessary part of the condemnation assembly that will be sent to the Department of Justice if the agency chooses to acquire by condemnation. The CO should refer to Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016) or as amended, Section 4.4, for additional information concerning surveys.

In cases involving multiple or overlapping property interests, it is advised that the realty specialist obtain separate legal descriptions for each interest, and that all the interests should then be depicted on one single plat. The appropriate Air Traffic Organization (ATO) office should review and approve the estates, property descriptions and plats for technical accuracy and to ensure that operational requirements are being met by the proposed acquisition.

D. Order Preliminary Title Evidence

At the outset of the acquisition process, it is imperative to obtain and review up-to-date title evidence of the property, which generally will be in the form of a title insurance commitment. The CO should refer to the most current version of the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions for additional information concerning title matters.

The title evidence should identify all interests such as leases, easements, liens and other recorded documents that affect the property. These interests will be listed as exceptions on the title insurance policy, and must all be further researched to determine what impact they may have on the conveyance of good title to the United States. Some title exceptions, such as the rights of a mortgage holder, can usually be extinguished at or prior to closing and, when extinguished, will not affect the conveyance of good title.

In some instances, the existence of certain easements and other property interests may adversely impact the operation of FAA facilities. For example, gas/oil exploration agreements and utility easements that grant rights over or across the property may interfere with the operation of certain FAA facilities. In these cases, it is imperative for the CO to inform the appropriate Air Traffic Organization office of the existence of these property interests and determine whether they would adversely affect operation of the facility prior to making the acquisition. In cases where an existing easement conflicts with agency needs, appropriate FAA officials must determine whether the easement should be acquired and extinguished (often at significant cost), or alternatively, whether the agency should seek other property to meet its needs. For example, if an existing utility easement would interfere with the operation of an FAA facility, the FAA may choose to relocate the facility rather than pay the cost associated with acquiring the easement.

CO should discuss any title problems that are discovered with the title company as well as with the Regional Counsel or Headquarters Counsel. The Chief Counsel has the delegated authority from the Department of Justice to pass on the sufficiency of title to lands being acquired by the agency (see Appendix 2), which he/she will do by issuing a preliminary opinion of title prior to the acquisition and a final opinion of title afterwards. However, researching, clearing title defects and providing an opinion as to the sufficiency of title is generally the responsibility of the CO. If title cannot be satisfactorily cleared, condemnation to clear title may prove to be the only recourse.

E. Obtain an Initial Appraisal Report

Prior to any real estate acquisition, it is necessary for the agency to obtain an up-to-date and approved appraisal report. The information and analysis contained in the appraisal report, such as the determination of the highest and best use for the property and market data utilized by the appraiser, will provide the realty specialist with vital information for use in negotiations with the landowner. In situations where the appraised amount for property containing an existing facility is exorbitantly high (as defined by the FAA), the CO should contact Technical Operations to explore the option of relocating the facility rather than proceeding with the acquisition.

The agency is required by statute to offer to purchase the property from the landowner for an amount that is not less than the value stated in an approved appraisal report.^[5] If the agency chooses to acquire the property by condemnation, then the appraisal report must be updated to the date of taking and will be used as the primary evidence for establishing the amount of just compensation owed for the property.

Given the various purposes that the appraisal report must serve, the quality and professional nature of the report, along with the qualifications of the appraiser who prepared it,

must be able to withstand intense scrutiny. Accordingly, it is strongly encouraged that the realty specialist select the appraiser with care. If the acquisition presents complex issues, such as a disagreement with the landowner about the possible highest and best use of the property, the agency will seek an appraiser who is qualified as an MAI (Member of the Appraisal Institute).

It is imperative that the CO provide the appraiser with all necessary information pertaining to the estates that are sought to be acquired. If the agency seeks to acquire an estate in fee simple and an estate for an access easement, the appraiser should be instructed to determine market value in accordance with most current version of the *Uniform Appraisal Standards for Federal Land Acquisitions*, , hereafter referred to as the Yellow Book. If there are any questions concerning whether additional should be given instructions to give the appraiser, particularly in situations presenting complex valuation problems, the CO should consult with FAA counsel or contact the DOJ Land Acquisition Section.

If condemnation is necessary and the case proceeds to trial, it will be up to the Department of Justice and the AUSA to determine whether the initial appraisal report is adequate for use at trial. If the initial report is not deemed adequate, it is the responsibility of the FAA to provide funding for an appraisal report that meets with DOJ approval. To avoid having to obtain a second appraisal for use at trial, the RECO should select the initial appraiser carefully, and provide the appraiser with all necessary information and instructions for the preparation of an adequate report. Although the agency may be required to select the “lowest bidder” when choosing an appraiser, the realty specialist can attempt to ensure a high quality appraisal report by adding qualification requirements to the scope of work, such as the requirement that the appraiser must be qualified as an MAI, or that the appraiser must have prior experience in federal condemnation actions.

F. Assess Any Environmental Issues

Agency policy requires that prior to acquisition of any real property, testing must be conducted to determine if the property contains any hazardous materials (“HAZMAT”). Under applicable environmental legislation, the current owner/operator of the property may be liable for cleanup and remediation of certain hazardous materials that exist on the property. Thus, in cases where the FAA has occupied the site for a number of years under a leasehold agreement, the agency may be jointly or severally liable for any contamination that exists on the property. Even when the FAA is not responsible for the contamination on the property, the cost of remediation and potential future liability risk should be factored in as part of the cost of acquisition. Accordingly, it is imperative that the property be inspected for hazardous material contamination prior to making the final decision to acquire the property.

In instances where the agency seeks to acquire the property by condemnation, the agency must certify that all applicable environmental regulations and procedures, including testing for hazardous material contamination, have been complied with. (See AMS T3.6.3 Environment, Conservation, Occupational Safety, and Drug Free Workplace) If cleanup or remediation of hazardous materials is necessary, it is not required that the cleanups be completed or even underway at the time of filing a condemnation action. Rather, the agency must inform the Department of Justice that hazardous materials exist on the site and explain the efforts that will be or have been taken to redress the contamination. Be aware that environmental contamination is a

factor to be considered in determining property value.

Special Considerations for Expiring Leaseholds

The FAA currently holds leasehold interests on many of the properties that it seeks to acquire. Because these leasehold arrangements often impose unfavorable economic terms for the agency, upon expiration of the lease the agency usually seeks to acquire the fee simple interest to the underlying property. In cases where the landowner is unwilling or unable to convey fee simple to the property, the agency must resort to condemnation in order to acquire the property.

In situations where an existing leasehold is about to expire, it is imperative that the CO be prepared to acquire an interest in the property as soon as the leasehold expires. Otherwise, once the lease expires the agency will enter into a “holdover tenancy,” meaning that the agency remains as the tenant on the property paying rent, which gives rise to an inverse condemnation claim for the landowner. In addition to the inverse condemnation claim, a holdover tenancy will likely complicate any potential negotiations for acquisition by purchase or for settlement of a condemnation case, and may also add to the agency’s overall cost of acquiring the property.

Accordingly, the CO must be aware of the expiration dates of existing leases, and proceed with plans for acquiring the underlying property accordingly. If the CO determines that a condemnation action may be necessary, then the Declaration of Taking condemnation assembly should be prepared and sent to the Department of Justice at least sixty days prior to the date of expiration of the leasehold. Negotiations to purchase the property from the landowner may continue after the condemnation package has been sent to the DOJ; however, any agreement to purchase the property must be made before the declaration of taking is filed.

If the agency is already in holdover status before the condemnation package has been sent to the Department of Justice, the Declaration of Taking should include a retroactive taking of a leasehold interest for the holdover period. The agency must separately appraise the value of the holdover leasehold interest, and include an estimated amount of just compensation for this holdover leasehold. Note that the property owner may challenge the holdover (retroactive) portion of the taking and there is a possibility that he may succeed because, technically, a Declaration of Taking cannot have a retroactive effect. This is a matter to be decided by the Court, but if the property owner's challenge succeeds, the agency could be liable for attorney fees. Moreover, if the landowner subsequently brings an inverse condemnation claim for the holdover period and is successful, the agency will be liable for attorney’s fees associated with that action as well. Thus, it is in the agency’s best interests to avoid holdover situations altogether by preparing to file a condemnation action as soon as the existing leasehold expires.

Negotiations to Purchase the Property

Prior to initiating a condemnation action, an agency should first attempt to acquire the property by negotiation and direct purchase. The Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4651, requires the agency to make “every reasonable effort to acquire expeditiously real property by negotiation.” The Act states in

pertinent part that:

“Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.” See 42 U.S.C. § 4651(2).

The Act goes on to state that “Before the initiation of negotiations for real property, the head of the Federal agency concerned shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property . . . The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.” See 42 U.S.C. § 4651(3).

Although the Act requires the Agency to provide the landowner with a “written statement” and summary of the basis for the estimated just compensation, the realty specialist is **strongly discouraged from providing the landowner with a copy of the appraisal report**, in case the negotiations are not successful and the property must be acquired by condemnation.

Frequently, once the realty specialist has made an offer to purchase the property, the landowner will wish to suspend the negotiations while the landowner retains an attorney and/or his own appraiser. This may cause several months to one year of delay, depending on how expeditiously the landowner chooses to proceed. The CO should therefore establish a time frame in which the landowner is to respond to the Government’s initial offer. Moreover, it is crucial for the CO to initiate negotiations well before the existing leasehold is to expire, in order to avoid adding the pressure of an impending deadline to the negotiations process.

Early in the negotiations for the purchase of the property, the CO should urge the landowner to make a counteroffer. If the property owner is unresponsive to repeated requests for a counteroffer, it is probably appropriate to advise the owner that you will continue the acquisition process through condemnation. The exercise of tact at this critical juncture may result in the realization by the property owner that delaying tactics and unreasonable counteroffers will serve no useful purpose and he or she will begin to negotiate in good faith. The CO should be open to any reasonable counteroffer from the property owner that will immediately lead to the prompt purchase of the property. Be wary of minor concessions made by the property owner in an effort to reopen negotiations where substantial differences still exist.

In some cases, however, the CO will conclude that further negotiations are fruitless, and that acquiring the property through condemnation is necessary. In such cases, the CO should provide the property owner with a certified letter outlining the progress of negotiations to date, make a final and best offer, and establish a deadline for a response from the property owner. The letter should also inform the landowner that if no response is made by the deadline, the agency will initiate a condemnation action to acquire the property, and that thereafter all negotiations would

involve the Department of Justice and the United States Attorney's office. This letter may be sent at any time but should be sent at no later than 90 days before expiration of current leasehold rights.

The preparation and submission of the condemnation assembly to the Department of Justice does not prevent continued negotiations and settlement up to the date of filing the Declaration of Taking. Generally, the Declaration of Taking will be drafted so that the taking will become effective on the day of the expiration of the leasehold. Coordination with the appropriate U.S. Attorney's office should resolve any issues regarding last minute negotiated agreements.

Please note that it is crucial to document all offers and counter-offers made during the negotiation process. This information will be useful to the U.S. Attorney's office and prevents duplication of negotiations by that office after the filing of the Declaration of Taking.

Statutory Authority for Condemnation and Financing the Acquisition

The basic authority for FAA to acquire property by condemnation is contained in Section 303(a)(i) and 307(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40110(a)(1) et seq and 49 U.S.C. 106 (L6-N1A). This basic authority has been delegated from the Administrator of the Federal Aviation Administration to the ~~Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1. Authority to acquire property by declaration of taking is set forth in the Declaration of Taking Act, 40 U.S.C. § 3114.

Funding for acquisitions is generally made available by appropriations acts, which change from year to year. It is important to note that funding for acquisitions is valid for only three years after enactment of the appropriations statute. This means that all funds must be obligated (though they need not actually be spent) within three years of passage of the statute. Accordingly, CO must be aware of the applicable deadlines on which particular funding will expire, and must be prepared to expedite the acquisition process if the three-year deadline is fast approaching. If there is some doubt as to which appropriations act applies to a given acquisition, you should contact the Service Center budget office or, alternatively, ABU- for guidance.

In some condemnation cases, the ultimate award of just compensation, or the settlement amount agreed to by the parties, may exceed the amount of funding provided by the original appropriations legislation. In those cases, it is imperative that the CO contact the appropriate service organization to attempt to secure additional funding to cover the shortfall. The CO should identify potential funding shortfalls as soon as possible to maximize the agency's ability to acquire additional funding. For example, if the landowner's appraiser produces a credible report concluding that the value of the property is in excess of the total funds provided by the appropriations legislation, the CO should alert the appropriate service organization of the possibility that there could be a funding shortfall for the acquisition, so that Service Center Logistics Manager may begin to plan for this contingency.

Preparing a Condemnation Assembly

In order to acquire property by condemnation, the CO must send a condemnation assembly to the Department of Justice. This section describes the necessary contents of the condemnation assembly.

Given the lengthy amount of time needed to prepare all the necessary elements of a condemnation assembly, CO are strongly encouraged to begin assembling these materials well in advance of the expiration of any existing leasehold. Once the condemnation assembly has been completed it should be forwarded to the regional Assistant Chief Counsel and headquarters counsel for final review. Upon completion of this review, the condemnation package should be forwarded to the ~~Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1 for signature and mailing to the U.S. Attorney General. Regional procedures vary but in all instances the condemnation package should be tracked to insure that the package is mailed to Department of Justice at least 60 days prior to the expiration of the current lease agreement.

A. The Transmittal Letter

The first part of a condemnation assembly is the Transmittal Letter from the FAA to the Attorney General of the United States. Generally, the Transmittal Letter will be signed by the ~~Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1. The Transmittal Letter should contain the following information (see Appendix 3 for a sample Transmittal Letter):

1. GENERAL AUTHORITIES AND APPROPRIATIONS ACT

The letter should contain a recitation of the FAA's general authority to acquire real property by condemnation, as well as a recitation of the delegation of that authority from the FAA Administrator to ~~the Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1. It is also necessary to include the correct appropriations act that provides the funds to acquire the property.

2. NECESSITY STATEMENT

The letter should include a statement that the taking is necessary for a well-established long-term need for a particular property or facility. A simple statement usually will suffice. For example, "The Remote Communications Air/Ground facility is a vital part of future FAA navigational aids and is a critical element of the National Airspace System. It is in the best interest of the Government to utilize the facility in its present location. There will be a continuing need for the facility throughout the foreseeable future."

3. IMMEDIATE POSSESSION STATEMENT

The letter should contain a statement as to whether immediate possession of the property being

acquired is needed. If the property is currently under lease, the letter should note when the leasehold is set to expire. If the FAA is continuing its existing occupancy, no order of possession is required.

4. DECLARATION OF TAKING STATEMENT

If applicable, the letter should include a statement that the agency seeks to acquire the property by a Declaration of Taking (DT). A Declaration of Taking will vest the property with the United States immediately upon filing the action and depositing the estimated amount of just compensation in the appropriate District Court.

5. COMPLIANCE WITH UNIFORM RELOCATION ACT

The letter should include a general statement that the agency has complied with the provisions of Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4601.

6. ENVIRONMENTAL COMPLIANCE STATEMENT

If the acquisition will result in the construction of new facilities, the Transmittal Letter should indicate compliance with the provisions of the National Environmental Policy Act, 42 U.S.C. § 4332 and, if applicable other statutes such as the National Historic Preservation Act of 1966, 16 U.S.C. § 470f. If the acquisition is for an existing facility that will not undergo any site changes or modifications, environmental proceedings are excepted by 42 Fed. Reg. 32467 Appendix 5, Paragraph 5f. In such cases, a statement referencing this exception will suffice.

7. LIMITATION STATEMENT

If there is any limitation that may be imposed on the acquisition by any statute, a statement as to the limitation must be included. The Federal Aviation Act does not impose any limitations on the acquisition of land for technical facilities except that of funding imposed by annual appropriations acts. It is unlikely that any individual acquisition will exceed the appropriation for all the land acquisitions funded in any particular year. Accordingly, a general statement that the acquisition will not exceed statutory limitations will serve to meet this requirement

8. POINT OF CONTACT

The letter should contain the name and contact information of the agency official who has been involved in the negotiations and preparation of the condemnation assembly.

B. Attachments to the Transmittal Letter

Several attachments must be included along with the transmittal letter, the most notable being the Declaration of Taking which will be discussed in detail in the next section. Other attachments are described below:

1. PAYMENT OF ESTIMATED JUST COMPENSATION

A Treasury check payable to the Clerk of the Court for the appropriate federal district should be enclosed. If doubt exists as to what district the case will be filed in, contact the Assistant Chief Counsel's office. The estimated amount of just compensation should be not less than the appraised value for the rights and/or interests being acquired. Be mindful that checks issued by the Treasury expire one year after the date of issue.

2. APPRAISAL REPORTS AND REVIEWS

Copies of all appraisal reports, including all unapproved and outdated appraisal reports and updates, along with the appraisal reviews should be included as an attachment to the transmittal letter.

3. TITLE EVIDENCE AND PRELIMINARY TITLE OPINION

A title package should be prepared that includes a copy of the title evidence (usually a title insurance commitment with copies of the documents mentioned therein), preliminary title opinion, a statement as to the location of title evidence (name and address of the local recorder of deeds, registrar, etc.), and all efforts made to cure title defects, if any. For those cases where a condemnation is being requested because of title defects, the following information is also required:

- A. An analysis of the defects and the agency's opinion as to the correct resolution of those title defects.
- B. A listing of the attempts to cure title defects made by the realty specialist.
- C. A summary of all discussions with the title company to have title defects removed.
- D. Any curative data obtained to remedy title defects.
- E. A Contract-to-Sell signed by the property owners, if applicable.

Additional Guidance can be found in the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions.

4. NEGOTIATOR'S REPORTS

A copy of the negotiator's report that lists the time and place of all negotiations, offers and counter-offers made, and any other relevant information concerning discussions with the property owner(s).

5. HAZARDOUS MATERIALS NARRATIVE

In accordance with FAA policy, DOJ should be provided with an explanation of all HAZMAT testing and remediation efforts that are planned for or underway on the property being acquired.

6. CERTIFICATE OF INSPECTION AND POSSESSION

This form should be completed, signed and dated by an individual employed by the acquiring agency who has recent knowledge of the property being acquired. (See Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions Appendix of Forms).

7. DECLARATION OF TAKING

A minimum of one copy of the Declaration of Taking (described in Part C below), signed by the ~~Director of the Real Property Management Organization, APM–~~Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1, along with the necessary attachments (described in Part D below), must be included with the Transmittal Letter to the Attorney General. If more copies are requested by the Department of Justice, more will be provided.

C. The Declaration of Taking

The format and content of a Declaration of Taking is standardized, and must include the following information (see example in Appendix Four).

1. CASE CAPTION

A case caption should be set at the top of the Declaration of Taking, setting forth the name of the United States District Court, with the names of the parties set forth below. In all cases, the Plaintiff in the condemnation action will be “THE UNITED STATES OF AMERICA.” The Defendants are identified by stating the property interest by size and location (for example “32.945 Acres of Land, More or Less, Situated in Montgomery County, Maryland”), and listing at least one individual who possesses an interest in the property (usually the primary landowner). Leave the Civil Number as a blank; the number will be assigned by the clerk after the case has been filed.

2. AUTHORITY FOR THE TAKING AND CERTIFICATIONS

The body of the DT begins by identifying the individual possessing the authority to acquire the property. This will be the ~~Director~~Deputy Assistant Administrator for the Office of the Real Property Management Organization, APM–1~~in~~Acquisitions and Business Services, ACQ-1 in most cases. The DT continues with a number of certifications that identify FAA's authority to take the property including the funding appropriation, the public uses for which the land is being taken, the estimated compensation for the taking, a legal description of the property and the estate(s) being taken, and a plat showing the estate(s) being taken. The legal description, estates being taken, and the plat are usually schedules that are attached to the DT.

3. CLOSING

The DT closes with an authorizing statement, date, signature, and signature block.

D. Attachments to the Declaration of Taking

1. Attachment A

The first attachment should be labeled "Schedule A" and should consist of a legal description of the property being acquired. In instances where more than one parcel is being acquired, each parcel should be separately identified (Parcel 1, Parcel 2, etc.) and described. It is strongly recommended that, rather than re-type legal descriptions from a title report or land survey, that such legal descriptions instead be copied in order to avoid mistakes or omissions. Label and number successive pages as "Schedule A, page 1 of 3", to avoid confusion with other schedules.

2. Attachment B

The second attachment should be labeled "Schedule B" and should consist of the survey plat(s) of the property being acquired. The plats should be easy to read and understand, but contain sufficient information to be useful. As a practical matter, try to avoid plats drawn on excessively large size paper.

3. Attachment C

The third attachment should be labeled "Schedule C" and should describe the interest(s) or estate(s) to be acquired. The types of estates taken may include the fee simple title and perpetual easements of various kinds (i.e., restrictive use, utility, access, etc.). Exercise care in describing the estates you wish to acquire as errors are common. For example, if you need an easement that will provide access and serve as a utility corridor, you should call it an access and utility easement, and not simply an access easement.

Each interest or estate being acquired should be matched to the appropriate parcel identified in Schedule A. Schedule C should also include a listing of all entities by name and address that may have an interest in the property being acquired. This list should include not only all the owners but also all persons shown by the title evidence as potentially or actually having an interest in the property, if we are taking that interest. Depending on the estate taken this could include the local tax assessing office, mortgagees, lienholders, utility companies with rights-of-way interests, lessees, as well as holders of gas, oil, timber, and mineral rights, etc. If an interest, or class of interests, is excluded from the estate taken, the holder of such interest need not be named. For example, if the estate taken is "fee simple, subject to existing easements for public roads and highways, public utilities, railroads and pipeline.", then holders of utility easements need not be owners and parties in interest is required because all holders of any interest in the property being taken must be given notice by the Assistant U.S. Attorney that the property is being acquired for public purposes. If all individuals with an interest in the property are not served, the possibility exists that the acquiring agency may have to pay twice for the property being taken.

Post-Transmittal Activities

Once the Condemnation Assembly is sent to the Department of Justice, it is reviewed by an attorney in the Land Acquisition Section of the Environment and Natural Resources Division. That attorney may contact the realty specialist to discuss details of the taking and/or the assembly package. Typically, the condemnation assembly is then sent to the appropriate U.S. Attorney's office in the federal district where the subject property is located, where it will be assigned to an Assistant U.S. Attorney (AUSA). Once the realty specialist receives the name and contact information for the AUSA handling the condemnation, the CO should initiate a call to the AUSA and offer any assistance possible in preparing the case for trial. This initial contact should begin a period of close cooperation between the AUSA and the realty specialist. A meeting between the CO and the AUSA at this stage may provide the AUSA with insight about property valuation issues as well as negotiation prospects with the property owner.

In Declaration of Taking cases, the estimated amount of just compensation is deposited in the registry of the court at the time that the case is filed. Distribution of the estimated amount of just compensation to the appropriate parties is the responsibility of the court. However, the realty specialist and the AUSA should make every effort to assist the court in this endeavor.

As soon as the AUSA files the Declaration of Taking, or notice of lis pendens, the RECO should coordinate with the AUSA and file a copy of the Declaration of Taking (or, in complaint-only cases, a notice of lis pendens) in the local land records for the county in which the subject property is located. The CO should also obtain updated title evidence, usually in the form of a title insurance policy (see the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), Section 3.6). to include a search of all records through the date of recording of the Declaration of Taking or the lis pendens. This updated title report should be promptly furnished to the AUSA. In addition, the initial appraisal report will need to be updated to the date of taking. In some cases, the AUSA may ask the acquiring agency to obtain a new appraisal or to assist in locating and retaining expert witnesses such as environmental or land use experts.

The CO should offer to attend pre-trial meetings and negotiation sessions and should have full authority from the agency to recommend settlement prior to trial based on detailed knowledge of the circumstances surrounding the case and on advice of the AUSA. Prior to any negotiation session, the CO should contact ABA to determine exactly what funding

limits may apply to settlements due to budgetary constraints. As the case proceeds to trial the CO should offer to assist in the preparation of any exhibits that may be required. In many instances the official property file will contain photographs or plats that may be useful during the trial.

Finally, the CO should plan to attend the entire trial proceeding. Negotiations and settlements have been known to occur up until the day of the trial itself, or during the trial. DOJ officials are the ones who negotiate and settle matters after a case has been filed. The realty specialist should consult the AUSA handling the case regarding how the realty specialist should participate in the settlement process.

Post-Trial Activities

When a court award (or a negotiated settlement) has been made that exceeds the estimated amount of just compensation deposited in the registry of the court, the AUSA will provide a certified copy of the judgment to the realty specialist. The CO should then take immediate steps to arrange for prompt payment of the deficiency (with interest) by Treasury check to the Clerk of the Court. The Land Acquisition section can assist in the calculation of the amount of interest due.

In those instances where compensation is awarded that is significantly higher than the Government's appraised amount, the title insurance policy may need to be increased to correspond to the higher property value (see the Regulations of the Attorney General Governing the Review and Approval of Title for Federal Land Acquisitions (2016), Section 3.6). However, that portion of the compensation awarded for damages to the remaining property should not be considered as part of the value of the property taken when determining how much title insurance to acquire. Unfortunately, the compensation awarded does not always provide a distinction between the value of property taken and any severance damages to the landowner's remainder parcel.

When the judgment involves an award which is considered to be excessive, the CO should discuss the possibility of an appeal with the AUSA and [APMACQ-1](#). Those discussions should focus on the potential success of an appeal and be weighed against the additional litigation costs associated with the appeal process. Specific procedures are required for filing an appeal; contact [APMACQ-1](#) for guidance concerning appeal procedures.

ATTACHMENT 1

Definitions

Appraisal

An appraisal is an estimate of value of property. Usually an appraisal is a written statement setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant data.

Assistant United States Attorney (AUSA)

An attorney employed by the Department of Justice who works under the supervision of a United States Attorney in one of the 94 United States Attorneys offices located throughout the United States. There is a United States Attorney in each federal judicial district.

Condemnation

The process by which property of a private owner is taken for public use upon the award and payment of just compensation. Condemnation is the right of the state to reassert its dominion over any part of the soil of the state on account of public exigency and for the public good. For all practical purposes the terms "condemnation" and "eminent domain" are synonymous.

Complaint

A complaint is the first or initial pleading on the part of a plaintiff in a civil action. A complaint will generally contain a statement of facts constituting a cause of action and a demand of relief to which the plaintiff supposes himself entitled.

Declaration of Taking

A document in the form and content specified in the Declaration of Taking Act, 40 U.S.C. § 3114, prepared by an acquiring agency and signed by an authorized agency official. The filing of a declaration of taking in a condemnation action together with a deposit into the registry of the court of estimated compensation thereby immediately vests title to the property in the United States. The amount of compensation due for the taking is adjudicated in subsequent proceedings and any difference between the estimated and actual just compensation with interest thereon computed from the date of taking is due the property owner.

Department of Justice

Department of the Executive branch of the Federal government responsible for, inter alia, prosecuting condemnation actions on behalf of other agencies of the Federal government.

Easement

An interest which one person has in the land of another, normally for the benefit of adjoining land. There are two types of easements. One is an "appurtenant" easement, which is an easement across a servient estate for the benefit of another property. An access easement is one example of an appurtenant easement. (For an example of a "Floating" access easement, see Appendix Four, Paragraph 6, subparagraph b.) The other is an "easement in gross", or "restrictive" easement, which is an easement that restricts what an owner can do with his property.

Fee

An absolute estate, subject only to the limitations of eminent domain, escheat, police powers, and/or taxation, where the owner is entitled to the entire property, with unconditional power of disposition during his life, and descending to his heirs upon his death intestate.

Hazmat

An acronym referring to any substance or class of substances that may be hazardous to the health and well being of the human population. Environmental regulations recommend that testing for hazardous substances be conducted prior to the acquisition of real estate in order to limit the liability of the property owner or user to correct any contamination discovered on the property regardless of who caused the contamination.

Interest

A very general term that denotes a right, claim, or share in real estate or chattels.

Inverse Condemnation

This is a claim brought by a property owner against a governmental agency to recover damages for the taking of property as a result of the government's activities when no compensation has been made to the property owner. A frequent basis for an inverse condemnation claim is damage to property due to airplane overflights which, by noise and vibration, cause a diminution of the property below the flight path.

Just Compensation

The full and fair monetary equivalent for the property taken for public use.

Lease

A written document by which the rights of use and occupancy of land and/or structures are transferred by the owner to another person for a specified period of time in return for a specified rent or other recompense.

Leasehold

An estate in realty held under a lease. The right of use by a lessee to use and enjoy real estate by virtue of a lease agreement.

Plat

A map or representation on paper of a piece of land, usually drawn to a scale. Plats will generally show property lines, and may also show other features such as roads, abutting ownerships, building locations, topographical features, vegetation, etc.

Property Description

This is an unequivocal identification of a specific piece of land. Several methods of have been

devised for adequately describing tracts of land such as the metes and bounds system and the Government Survey system (also called the Township/Section system).

Public Use

This means a use concerning the whole community as distinguished from particular individuals. Each member of the community need not be equally interested in such use, or be personally or directly affected by it; if the object is to satisfy a public want or exigency, that is sufficient.

Title Insurance

This is insurance against loss or damage resulting from defects or failure of title to a particular parcel of real estate, or from the enforcement of liens existing against it at the time of the insurance. In some locations the Torrens system of land registration exists in which the sovereign governmental authority issues title certificates covering the ownership of land which tends to serve as title insurance.

Vest

This means to give a fixed and indefeasible right. To have vested rights to a property means that rights have been so completely and definitely accrued to or settled in a person that they are not subject to being defeated or cancelled by the act of any other private person.

ATTACHMENT 2

Title Information

The Attorney General has redelegated his authority to pass on the sufficiency of title in land acquisitions to the Department of Transportation, Federal Aviation Administration. That redelegation is recited below.

FEDERAL REGISTER, VOL. 35 NO. 251 - 29 DECEMBER 1970

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

REGIONAL COUNSELS AND CENTER COUNSELS AND/OR HEADQUARTERS
COUNSEL

Notice of Redlegation of Authority to Approve

Sufficiency of Title to Land

Section 355 of the Revised Statutes, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to lands being acquired by the United States.

The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 Fed. Reg. 16084; 28 C.F.R. 0.66). The Assistant Attorney General, Land and Natural Resources Division has further delegated certain responsibilities in connection with the approval of the sufficiency of title to land to the department of Transportation as follows:

**DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL
OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES**

Pursuant to the provisions of Public Law 91-393, approved September I, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

- i. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.
2. This delegation is limited to:
 - (a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.
 - (b) The acquisition of lands valued at \$100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

As stated in the above-mentioned act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render an opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of title.

This the 2nd day of October, 1970

SHIRO KASHIWA, Assistant Attorney General, Land and Natural Resources Division.

The above authority was delegated to the General Counsel of the Department of Transportation by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 F.R. 17658, November 17, 1970

Finally, the authority was redelegated to the Chief Counsels of the operating administrations of the Department of Transportation, including the Federal Aviation Administration (35 F.R. 18412, December 3, 1970).

In consideration of the foregoing and pursuant to the authority delegated to me as chief counsel of the Federal Aviation Administration by the General Counsel of the Department of Transportation, the Regional Counsels and Center Counsels of the Federal Aviation Administration are hereby authorized to approve the sufficiency of the title to land being acquired by purchase or condemnation by the United States for the use of the Federal Aviation Administration. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegations of this authority may only be made by the Regional Counsels and Center Counsels to one attorney within their respective staffs.

Issued in Washington, D. C. on December 22, 1970.

GEORGE U. CARNEAL, JR. General Counsel

ATTACHMENT 3

Sample Transmittal Letter

The Honorable Name, Attorney General

c/o Land Acquisition Section

P.O. Box 561

Washington, DC 20044

Dear Mr. Attorney General:

It is respectfully requested that you acquire, by condemnation, fee simple title to certain land situated in Perry County, Illinois, for use as a land site for radio communication link (RCL) facility. The land is more fully described in the Declaration of Taking.

This request is made pursuant to 49 U.S.C. § 40110, 40 U.S.C. §§ 3113-14, and in accordance with the authority delegated by the Administrator of the Federal Aviation Administration to the ~~Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services , ACQ-1. Funding was apportioned to the Federal Aviation Administration for the purchase of this property by the Transportation and Related Agencies Act of 1993 (Public Law 107-388), dated April 3, 2001.

The radio communication facility link facility provides a voice and data link between air traffic control facilities and is critical to the operation of the National Airspace System. There will be a continuing need for the facility throughout the foreseeable future.

The government has operated and maintained this facility under a lease agreement since 1977. The owners have rejected all government offers to purchase the subject property. The current lease will expire on September 30, 2004, and continued possession is required on October 1, 2004. Thus, immediate possession is necessary and a Declaration of Taking is therefore requested.

Since this acquisition is for an existing operational facility that will not undergo any site change, environmental processing is exempted by our procedure 42 Fed. Reg. 32647 (Appendix 5, paragraph 5f).

I certify that the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policy Act (Pub. L. 91-646) have been complied with in our attempts to acquire this property. I also certify that there are no statutory limitations imposed on this acquisition and that the ultimate award for said land will probably be within any limits prescribed by law on the price to be paid therefore.

Enclosed herewith are the following:

1. An original and three copies of the Declaration of Taking with Schedules "A", "B", and "C" attached.
2. U.S. Treasury Check No. 786,465,982 in the amount of \$86,500, said sum being the amount estimated as just compensation for said property with all buildings and improvements thereon.
3. Four copies of the complete condemnation assembly package.

If you or your staff need any assistance or additional information in connection with this request, please contact (insert and telephone number of point of contact) of FAA's Great Lakes Region Real Estate and Utilities office.

Sincerely,

~~Director of the Real Property Management Organization,~~
~~APM-1~~
Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1

Enclosures

ATTACHMENT 4

Sample Declaration of Taking

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States,)
)
Plaintiff,) CIVIL NO. _____
)
)
vs.)
)
32.945 ACRES OF LAND, MORE)
OR LESS, SITUATED IN MONTGOMERY)
COUNTY, MARYLAND, AND FRED)
JOHNSON, AND UNKNOWN OWNERS)
)
Defendants.)

DECLARATION OF TAKING

I, Name, ~~Director of the Real Property Management Organization, APM–Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1~~, Federal Aviation Administration, Eastern Region, do hereby declare that:

1. The land, hereinafter referred to as the “property,” is hereby taken under and in accordance with 49 U.S.C. § 40110, 40 U.S.C. §§ 3113 and 3114, and Public Law 107-87, dated December 18, 2001, which appropriated funds for such purposes, and the authority delegated by the Administrator of the Federal Aviation Administration (FAA) to the ~~APM Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1~~ of the FAA (27 Fed. Reg. 3773).

2. A determination has been made by me that the subject property is necessary for public use to provide a site for the continued operation and maintenance of a Non-Directional Radio Beacon facility. This facility is used by aircraft for navigational purposes and is a critical element to the National Airspace System.

3. A general description of the property being taken is set forth in "Schedule A" attached hereto and made a part hereof.

4. A plan showing the property taken is attached hereto as "Schedule B" and made apart hereof.

5. The owner and any parties having or claiming an interest in the subject property are listed in "Schedule C," attached hereto and made a part hereof.

6. The estates being acquired here for public use are:

a. As to the Non-Directional Radar Beacon facility lot, containing 32.00 acres of land: fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

"Floating" Easement - A perpetual and assignable easement and right-of- away to locate, construct, operate, maintain, and repair a roadway in, upon, over and across the land described in "Schedule A", together with the right to trim or remove any vegetative or structural obstacles that interfere with the right-of-way; subject, to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the landowner, its heirs and assigns, to 1.) the right to use the surface of such land as access to their adjoining land or for any other use consistent with its use as a road; 2) the right to relocate said right-of- way at any time, provided a) the United States shall have continuous access during the relocation process; b) the relocated easement and right-of-way shall provide access as passable as that of the existing road, and it shall be located on a reasonably convenient route from described in Schedule "A" to the public road; c) the relocated easement and right-of-way shall be of equal width as the road described in Schedule "A", and shall be clearly described in the same manner as the original easement in a properly recorded instrument; and d) the relocated easement and right-of-way is clearly described in a recordable instrument, and the United States must sign said instrument to acknowledge that it has received notice of the relocation, which signature shall not be unreasonably withheld.

b. The estate(s) taken for said public uses is (list estate(s) or interest being taken – fee simple, perpetual easement such as utilities, cabling, leasehold, leasehold than fee simple or term of years then fee simple for holdover situations, etc.) and is further set forth in "Schedule A" which is attached thereto and made a part hereof.

7. A plan showing the property taken in the form of a survey is attached hereto as "Schedule B" and made a part hereof.

8. The owner and any parties having an interest in the subject property are listed in "Schedule C" attached hereto and made a part hereof.

9. The sum of money estimated by me as just compensation for the acquisition of

said property interest is ninety-five thousand five hundred dollars (\$95,500.00). It is my opinion that the ultimate award of just compensation for this acquisition will be within any limits prescribed by law on the price to be paid therefore.

10. I herewith deposit (\$95,500.00) in the registry of the court for use and benefit of the persons entitled thereto.

In witness whereof, the United States of American has caused this Declaration of Taking to be signed in its name by me, as ~~Director of the Real Property Management Organization, APM-1~~ Deputy Assistant Administrator for the Office of Acquisitions and Business Services, ACQ-1, Federal Aviation Administration on this ____ day of __, 2005 at Jamaica, New York.

Name APMACQ-1

Federal Aviation Administration

[1]/This document is a revision to the 1993 pamphlet Preparing Condemnation Assemblies for Submission to Department of Justice

[2]/ The Supreme Court has stated that “[Condemnation] authority is essential to [the] independent existence and perpetuity [of the United States] If the right to acquire property . . may be made a barren right by the unwillingness of property holders to sellthe constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of . . . a private citizen. This cannot be.” Kohl v. United States, 91U.S.367, 371 (1875).

[3]/ See, e.g., Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

[4]/ See, Kirby Forest Industries v. United States, 467U.S.1 (1984).

[5]/ See Uniform Relocation Assistance and Real Property Acquisition Policy Act, Pub. L. 91-646, 42 U.S.C. § 4651(3) (1987).

Section Revised: T3.10.1 – Contract Administration

Procurement Guidance - (~~7/2021~~9/2021)

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

- 1 Contract Management Revised ~~9/2020~~9/2021
- 2 Basic Responsibility for Contract Administration Revised 7/2012
- 3 Assignment of Contracting Officer's Representative Revised ~~9/2020~~9/2021
- 4 Communications with Vendors Revised 9/2020
- 5 Contract Modifications Revised ~~9/2020~~9/2021
- 6 Novations and Change-of-Name Agreements Revised ~~9/2020~~9/2021
- 7 Contract Files Revised ~~7/2020~~9/2021

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

- 1 Use of Government Excess Equipment Revised 9/2020
- 2 Suspension and Stop-Work Orders Revised ~~9/2020~~9/2021
- 3 Conversion of FAR Contracts to AMS Revised 9/2020
- 4 Contract Closeout Revised ~~9/2020~~9/2021
- 5 Final Indirect Cost Rates Revised ~~9/2020~~9/2021
- 6 Contract Audit Revised 9/2020
- 7 Bankruptcy Revised 9/2020
- 8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020
- 9 Contractor Performance Documentation and Maintenance Revised 4/2021

C Special Contract Administration Actions for Real Property Added 9/2020

- 1 Real Estate Asset Management Added 9/2020
- 2 Inspection and Acceptance Added 9/2020

D Clauses Revised 9/2020

E Procurement Forms Revised ~~9/2020~~9/2021

F AppendicesF Procurement Samples Added ~~9/2020~~9/2021

G Procurement Templates Added 9/2021

H Procurement Tools and Resources Added 9/2021

I Appendices Revised ~~9/2020~~9/2021

- ~~1 Appendix – Reserved~~ Revised 7/2014
- ~~2 Appendix – Reserved~~ Revised 7/2014
- 1 Appendix - When Should a COR be Appointed Revised ~~9/2020~~9/2021
- ~~4 Appendix – Stop Work Order~~ Revised 4/2011
- ~~5 Appendix – Novation Agreement~~ Revised 4/2011
- ~~6 Appendix – Change of Name Agreement~~ Revised 4/2011
- ~~7 Appendix – Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction~~ Revised 7/2021
- ~~8 Appendix – Contract File Completion Statement~~ Revised 4/2011
- ~~9 Appendix – Reserved~~ Revised 7/2014
- ~~10 Appendix – Common Modification Authorities for Supplies, Services, or Construction~~ Revised 10/2020
- 2 Appendix - Guide for Creating and Maintaining Contract Administration Files for

T3.10.1 Contract Administration Revised 1/2009

A General Contract Administration Revised 9/2020

1 Contract Management Revised 9/2020/2021

a. ~~a.~~ Contracts are managed to ensure ~~that~~ FAA receives a specific product or service or real property in a timely manner. In certain circumstances, a modification to contractual requirements, with or without consideration from the contractor, may be in ~~the~~ FAA's best interest. -If such a situation arises, the Contracting Officer (CO) documents the circumstances.- When the CO intends to substantially alter the obligations of the parties without consideration, the CO first obtains concurrence ~~off from~~ legal counsel and the Chief of the Contracting Office (COCO) before execution, and must document the rationale.

b. ~~b.~~ The Appendices to this guidance ~~includes~~ include memoranda, letters, and agreements used for contract administration actions described in this section. The stop work order, novation, and change of name agreement in the Appendices may be modified by the CO, subject to legal counsel's concurrence.

c. ~~c.~~

c. Use of AMS contract file content checklists is mandatory; these checklists are in FAST under Procurement ~~Form Templates~~ Checklists.

2 Basic Responsibility for Contract Administration Revised 7/2012

COs are responsible for administering contracts covered by AMS. This is accomplished through a team effort with the program office, and working through the Contracting Officer's Representative (COR) and other functional specialists supporting a program.

3 Assignment of Contracting Officer's Representative Revised 9/2020/2021

a. ~~a.~~ *Designating a Contracting Officer's Representative (COR).*— The CO may designate an individual to act as his/her representative to facilitate contract administration. -A COR resolves technical issues, gives technical direction to the contractor, and interprets technical processes and procedures for the CO. Other functions include interpreting technical requirements; assisting with the acquisition strategy; assisting with or developing the statement of work or requirements; preparing Government cost estimates; assisting in negotiation of costs or price of technical requirements; monitoring and evaluating contractor or vendor performance; reviewing and accepting services, supplies, and equipment; reconciling invoices and recommending payments. Requiring organizations should ensure ~~that~~ the person recommended as COR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. -The CO

appoints a representative by execution of a COR Delegation ~~Form~~Letter (see AMS Procurement ~~Forms~~Templates for COR Delegation or Real Property Templates and Samples for COR Delegation For Real Property) describing specific delegated authority and responsibilities. The ~~Form~~letter is provided by the CO to the COR at the time the assignment is made or changed in any way. -The COR must sign the ~~Form~~Delegation Letter to acknowledge completion of mandatory COR training or that it will be completed in acknowledgement. ~~the near future.~~ (See the AMS COR Handbook, found on the FAST website under Procurement Tools and Resources, for additional information about COR duties-).

b. *b. Basic Training and Biennial Refresher Training Requirements.* -See AMS Policy Section 5, Acquisition Career Program, for complete training requirements.

(1) ~~(1)~~-The designated COR must meet the initial training requirement for certification by completing the designated hours of COR training. The required training is established as a three level certification program. -Training and certification for Levels I and II will be completed prior to appointment. -Level III certification must be completed no later than six months after appointment. -Training may be completed online or in a classroom. - Information regarding online and classroom training providers can be obtained from the Acquisition Career Management Office (AAP-300).

(2) ~~(2)~~-The COR must provide documentation showing certification or a waiver to the CO.

~~c.~~

c. *Authority of the Contracting Officer's Representative*~~COR~~. A duly-assigned COR is authorized to perform the actions delegated by the CO in a COR Delegation Form. -When determining the support needed from a representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the representative in ~~this~~ ~~Form~~the letter. One COR Delegation ~~Form~~Letter for all situations may not be appropriate because contractual situations are distinct and have varying needs. The ~~Form~~letter may be modified to reflect the specific needs of the contract and CO. - Depending on the scope, duration, complexity and aggregate total estimated potential value of the contract, a COR may not be required.

~~d.~~

d. *Changing the Contracting Officer's Representative.* - To change the representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. -Both actions are in writing and issued concurrently. The CO must forward copies of COR changes to the Acquisition Career Management Team (AAP-300), as they occur.

~~e.~~

e. *Notifying the Contractor.* -The CO furnishes copies of the COR Delegation ~~Form~~Letter and revocation memoranda to the contractor so that they are aware of the representative and his or her authority and responsibilities.

4 Communications with Vendors Revised 9/2020

Teamwork is an important element for successful contract performance. COs should establish good working relationships with vendors, and regular communication helps build this relationship. -Post award conferences, either in person or by telephone, are one means to establish communication and lay the foundation for teamwork at the start of contract performance. -After performance has begun, recurring communication ensures everyone working under the contract understands the objectives and is focused on a common goal, and that any potential problems or schedule difficulties are identified and addressed before adversely impacting FAA or the contractor. -Communication with the vendor and internal stakeholders (i.e. legal and/or service organization) is particularly essential when the following occur: at the beginning of contract performance; whenever either party detects a problem; and before and after significant milestones. However, communication between FAA and the contractor should occur routinely even when no problems may be encountered.

5 Contract Modifications Revised 9/2020/2021

a. Contract Modifications for Products, Services, and Construction

(1) *Authority.* Only a CO or person delegated specific authority to execute contract modifications for products, services (including real property related services), and construction contracts, may execute contract modifications.

(2) *Ceiling-Priced Modifications.*

(a) Contract modifications should be priced before execution, if this can be done without adversely affecting FAA's interests. If a ceiling-priced modification is entered into authorizing the contractor to start performance before final agreement on the modification's price, the CO must include in the modification:

1) All requirements for performance or delivery;

*2) The contract type, maximum price or cost to be negotiated, FAA's maximum liability pending definitization and a provision permitting the CO to determine a reasonable price or cost (subject to the disputes provisions); and

*3) A definitization schedule with dates for submission of the contractor's price proposal, required cost or pricing data, make-or-buy and subcontracting plans if required, a date for starting negotiations, and a target date for definitization. The definitization should be completed within 180 days after the date of the ceiling-priced modification or before completion of 40% of the work to be performed,

whichever occurs first.

- (b) If agreement on the modification's price is not reached by the target date or within any extension of it granted by the CO, the CO may, with approval of the Chief of the Contracting Office, determine a reasonable price or fee, subject to contractor appeal as provided in the "Contract Disputes" clause. In any event, the contractor must proceed with completion of the contract, subject only to the "Limitation of FAA Liability" clause.

~~e.~~(3) *Types of Contract Modifications.* Contract modifications fall into the following categories (see ~~the Appendix to this guidance section~~ AMS Common Authorities for Modifications for Supplies, Services, or Construction in Procurement Tools and Resources for a detailed description of the types of modifications and associated authorities for modifying contracts):

~~(e)~~(a) *Bilateral.* A bilateral modification is a contract modification jointly agreed to by a CO and contractor. The contractor's oral or written agreement is sufficient to indicate contractor agreement; however the CO must obtain the contractor's written agreement, within a reasonable period of time, in the form of a bilateral contract modification following the oral agreement. Bilateral modifications are used to:

- 1) Make equitable adjustments when necessary;
- 2) Definitize quick-response contracts;
- ~~2~~3) Reflect other agreements of the parties which modify the terms of contracts; or
- ~~3~~4) Make changes requested by the contractor.

~~(e)~~(b) *Unilateral.* A unilateral modification is a contract modification made by the CO, without advance concurrence by the contractor. Unilateral modifications are used to:

- 1) Make administrative changes;
- 2) Issue changes under the Changes clause; or
- 3) Make changes authorized by clauses other than a Changes clause (e.g.,

Property clause, Options clause, Differing Site Conditions clause, etc.).

~~(3)~~(4) *Extension of Contracts.*

(a) *Before Expiration.* The CO may extend a contract before it expires, using a bilateral contract modification. However, contract extensions may constitute a single source procurement, and as such, become subject to requirements for single source justification and approval. When considering a contract extension, the CO will first determine, in consultation with legal counsel, if the extension constitutes new work. If so, the CO must comply with single source requirements in AMS policy 3.2.2.4 for market analysis, documentation, and approval.

(b) *After Expiration.* The CO must **not** extend a contract after it has expired.

b. Supplemental Agreements

(1) *Authority.* Only a CO or person delegated specific authority may execute supplemental agreements for real property contracts. Real property contracts include but are not limited to leases, easements, memorandum of agreements, permits, and licenses.

(2) *Supplemental Agreement Requirements.*

(a) All modifications to the existing requirements must be within the scope of the real property contract (e.g., the requirements the lessor has to perform on the lease).

(b) For leases, no supplemental agreement may extend the term beyond twenty (20) years unless approved by the Office of Chief Counsel, Field Operations, Acquisition and Real Estate. This restriction does not apply to no-cost leases.

(3) *Mandatory Use of Supplemental Agreements.* The CO **must** use a supplemental agreement for modifications to existing real property contract requirements to:

(a) Document changes in ownership;

(b) Exercise an option provided in the lease, e.g. renewal, early termination, etc.;

(c) Extend a lease, easement, or other real property interest prior to expiration; and

(d) Change or modify any aspect of the real property contract.

(4) *Types of Supplemental Agreements*. Supplemental agreements fall into the following categories:

(a) *Unilateral*. A unilateral supplemental agreement is executed only by the CO, and consent of the vendor is not required. The following are examples where unilateral supplemental agreements are appropriate:

- 1) Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease-;
- 2) Exercising a termination right in accordance with the cancellation clause in a contract for a real property interest;
- 3) To document a change in rent previously agreed to in the real property contract that requires an event in the future in order to determine the rent change, e.g. the operating cost escalation clause or tax adjustment clause; or
- 4) To document a change in ownership where the CO has supporting documentation in the real estate file provided by the new owner.

(b) *Bilateral*. A bilateral supplemental agreement is one that must be signed by the CO and the vendor. Any changes to the contract not previously negotiated and agreed to in the contract require a bilateral supplemental agreement. The following are examples where bilateral supplemental agreements are required:

- 1) To identify or change the rent commencement date;
- 2) To modify square footage and associated rent based on actual measurement upon acceptance of the space for FAA occupancy;

3) Extending the lease term; and

4) Terminating a lease that does not contain termination rights.

6 Novations and Change-of-Name Agreements Revised 9/2020/2021

a. Novation.

1) (1)-Novation is a legal instrument executed by the contractor (transferor), the successor in interest (transferee) and the Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Novations typically occur when the assets of the transferor are purchased by another company but may also be considered when a contractor is unable to perform and another viable contractor is willing to assume the original contractor's rights and duties under the contract.

2) ~~(2)~~ When in its best interest, ~~the~~ FAA may recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of:

(a) ~~(a)~~ All of the contractor's assets; or

(b) ~~(b)~~ The entire portion of the assets involved in performing the contract. Examples of such transactions include, but are not limited to:

(i) ~~(i)~~ Sale of the contractor's assets with a provision for assuming liabilities;

(ii) ~~(ii)~~ Transfer of the contractor's assets incident to a merger or corporate consolidation; and

(iii) ~~(iii)~~ Incorporation of a proprietorship or partnership, or formation of a partnership.

3) ~~(3)~~ A novation agreement may not be necessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government.

~~(4)~~

4) ~~(4)~~ *Contractor (Transferor) Responsibilities.* Contractors requesting a novation of a contract to recognize a successor in interest must provide the information the CO needs to evaluate and process the novation request. This includes information that validates that novation of the contract is in the best interest of ~~the~~ FAA and should include:

- (a) ~~(a)~~ Three copies of the proposed novation agreement (see "Paragraph (7) Content of Novation Agreement") signed by the original contractor and the successor in interest;
- (b) ~~(b)~~ One copy each, as applicable, of the following:
 - (i) ~~(i)~~ The document describing the proposed transaction, purchase/sale agreement or memorandum of understanding;
 - (ii) ~~(ii)~~ A list of all affected contracts between the transferor and ~~the~~ FAA, as of the date of sale or transfer of assets, showing for each, as of that date, the
 - a. ~~(A)~~ Contract number and type;
 - b. ~~(B)~~ Name and address of the contracting office;
 - c. ~~(C)~~ Total dollar value, as amended; and
 - d. ~~(D)~~ Approximate remaining unpaid balance;
 - (iii) ~~(iii)~~ Evidence of the transferee's capability to perform;
- (c) ~~(c)~~ Any other relevant information requested by the CO;
- (d) ~~(d)~~ One copy of each of the following documents, as applicable, as the documents become available except as provided in (5) below:
 - (i) ~~(i)~~ An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree;
 - (ii) ~~(ii)~~ A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets;
 - (iii) ~~(iii)~~ A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets;
 - (iv) ~~(iv)~~ An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts;
 - (v) ~~(v)~~ The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer;
 - (vi) ~~(vi)~~ Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants;
 - (vii) ~~(vii)~~ Evidence that any security clearance requirements have been met;
 - (viii) ~~(viii)~~ The consent of sureties on all contracts listed under (4)(b)(ii) of this section if bonds are required, or a statement from the transferor that none are required.

5) ~~(5)~~ The CO may modify this list of documents, provided that the CO receives information sufficient to protect the Government's interest.

~~(6)~~
6) *CO Responsibilities.* The CO has the primary responsibility to process the novation and determine, in consultation with legal counsel, if it is in the best interest of ~~the~~ FAA.

~~(a)~~

(a) *Novations Involving More Than One Contract.* When multiple contracts are involved, the CO administering the contract with the largest unpaid dollar balance should coordinate the novation agreement for all FAA contracts.

(b) ~~(b)~~ *Coordination with Other Executive Agencies.* The FAA may elect to have its contracts included in the novation agreement (the "global agreement") being processed by the responsible contracting officer for all of the other executive agencies. If this election is made, the FAA CO should negotiate a separate advance agreement with the contractor that addresses any issues unique to the FAA, if appropriate. This agreement should be attached to and incorporated in the global novation agreement.

~~(c)~~

(c) *Evaluating the Novation Request.* The CO should consider all the information collected as a result of the proposed novation request with emphasis on the successor's ability to perform including:

(i) ~~(i)~~ Contractor submissions under (5) above;

(ii) ~~(ii)~~ Information provided by other contracting offices;

~~(iii)~~ Information indicative of the successor's responsibility such as

(iii) debarment and suspension information;

(iv) ~~(iv)~~ National Institute of Health's Past Performance Database;

(v) ~~(v)~~ Organizational conflict of interest;

~~(vi)~~ Any other information that reflects the successor's ability to perform the contract.

~~(d)~~

(d) *Conflict of Interest (COI).* If the CO determines that a COI exists and cannot be resolved, but the novation is in the best interest of ~~the~~ FAA, the CO may initiate action to waive or mitigate the COI in accordance with AMS Procurement Guidance T.3.1.7.

~~(e)~~

(e) Coordinate the action with legal counsel to assure legal sufficiency.

~~(f)~~

(f) CO's Decision.

(i) ~~(i)~~ *Rejecting the Novation Request.* If the CO determines that it is not in the best interest of the FAA to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(ii) ~~(ii)~~ *Executing the Novation.* If the CO approves the novation, he/she should:

- a. ~~(A)~~ Prepare and sign a written contract modification for each affected contract;
- b. ~~(B)~~ Incorporate a copy of the agreement into the contract modification;
- c. ~~(C)~~ Place the original contract modification in the official contract file;
- d. ~~(D)~~ Distribute the modification to the transferor; the transferee, affected FAA contracting offices, the paying office and any other distribution that is required for contract modifications.

7) ~~(7)~~ *Content of the Novation Agreement.* ~~Appendix 5 to this guidance~~ A sample Novation Agreement is ~~a novation agreement that~~ located in Procurement Samples provides a guide to preparing novation agreements. This may be adapted, subject to legal counsel's review, to fit specific cases, but should include the following provisions:

- (a) ~~(a)~~ Successor contractor/transferee ~~Responsibilities~~ responsibilities;
- (b) ~~(b)~~ The transferee assumes all the transferor's obligations under the contract;
- ~~(c)~~ The transferor waives all rights under the contract against the
- (c) Government;
- (d) ~~(d)~~ The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
- (e) ~~(e)~~ A statement that nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

8) ~~(8)~~ Any separate agreement between the transferor and the transferee regarding assumption of liabilities (e.g., an Advance Agreement covering the treatment of long-term incentive compensation plans, cost accounting standards noncompliance issues, environmental cleanup costs, final overhead costs) and any other issues should be incorporated in the novation agreement.

~~b.~~ *Change of Name Agreements.*

-A change of name agreement is appropriate when only the contractor's name changes and the rights and obligations of the parties are not affected.

1) ~~(1)~~ *Contractor's Responsibilities.* The contractor should submit the following to the CO:

- (a) ~~(a)~~ A written request to the CO to change the name;
- (b) ~~(b)~~ The document effecting the name change, authenticated by a proper official of the State having jurisdiction;
- (c) ~~(c)~~ The opinion of the contractor's legal counsel stating that the change of name was

properly effected under applicable law and showing the effective date;

(d) (d)-A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The CO may request the total dollar value as amended and the remaining unpaid balance for each contract.

2) ~~(2)~~ *CO's Responsibilities*. The CO will then prepare a contract modification in the new name of the firm, and reference in the body of the modification the former name and date of the vendor's request. The modification should state something similar to: "This modification changes the name of the Contractor from *[enter contractor's previous name]* to that shown above. This change is made at the request of the Contractor received on [insert date]."

(3)
3) A format for a Change of Name ~~agreement~~ Agreement is located in Appendix 6 Procurement Samples.

7 Contract Files Revised 7/20219/2021

a. Contract Files for Products, Services, or Construction.

(1) The files containing records of all contractual actions should be maintained by the organization or person administering the contract. Documentation in the files should be a complete history of the transaction and:

(a) Provide a complete background as a basis for informed decisions at each stage in the acquisition process;

(b) Support actions taken;

(c) Provide information for reviews and investigations; and

(d) Furnish essential facts in the event of litigation or Congressional inquiries.

(2) A contract file should consist of the following:

~~(a) Contracting office documentation~~ of the acquisition, basis for

(a) award, assignment of contract administration if applicable (including payment

responsibilities), and any subsequent actions taken by the contracting office~~;~~;

- (b) Contract administration files that document actions reflecting the basis for and the performance of contract administration responsibilities;
 - (c) Government-furnished/contractor-acquired property file; and
 - (d) For contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing), paying office contract file, which documents actions prerequisite to, substantiating, and reflecting contract payments.
- (3) The contract files that contain proprietary or source selection information should be identified as such and protected from disclosure to unauthorized persons.
- (4) A guide describing creation and maintenance of contract administration files is in Appendix ~~72~~ to this Guidance.
- (5) File content checklists for contracts, purchase orders/FSS orders, blanket purchase agreements, and agreements are in the Procurement ~~Form Templates~~Checklists area of FAST. These checklists will assist in organizing the file and ensuring that required clearances and documents are properly filed. The CO must use and incorporate the following checklists in applicable files:

~~(a) Contract Organization and File Content List~~

~~(b)(a) Purchase Order/GSA/FSS Order File Checklist*~~

~~a.~~(a) Blanket Purchase Agreement (BPA) File Checklist

(b) Construction File Checklist

(c) Contract File Checklist

(d) Delivery Order/Task Order/Blanket Purchase Agreement Call Checklist

(e) Grants Checklist

~~b.~~(f) Interagency Agreement ~~File~~ Checklist

(g) Other Transaction Agreement Checklist

(h) Purchase Order/GSA/FSS Order File Checklist*

* Note: Checklist not required for orders with a total value of less than \$10,000.

b. Contract Files for Real Property.

(1) Documentation to the Contract File

Sufficient documentation must be developed to explain and ~~to~~ justify the real property acquisition action taken. COs must use the appropriate checklists to ensure the adequacy of contract clauses and to ensure required documentation is in the file. COs must use a 6 part folder for all real property acquisition files.

(2) Life Safety Compliance/Seismic

Life Safety Compliance and/or Seismic Certifications must be included in the contract file. The CO must ensure that the original signed certification(s) or applicable update is placed in any new or succeeding contract file and that a copy is kept in the previous contract file.

(3) Utility Documentation

- (a) The CO must use the utility checklist when assembling the utility file. The checklist must be filled in completely.
- (b) If a required item is listed in the checklist, but is not applicable, the CO must place a N/A and a note in the file stating why it is not applicable.
- (c) The CO establishes and maintains hard copy records of the utility contract, purchase order or state utility contract.
- (d) The permanent file for each facility must remain active for the life of the facility and contain all supporting documents pertaining to the utility contract activity.
- (e) COs must use a 6-part folder system for all their utility acquisition files.

B Special Contract Administration Actions for Products, Services, and Construction Added 9/2020

1 Use of Government Excess Equipment Revised 9/2020

The CO may authorize a cost reimbursement contractor to use excess FAA or DOT equipment, if a good business decision. The FAA Property Management organization makes arrangements for excess property upon written request by the contractor and approval by the CO. When FAA provides excess property to contractors, appropriate AMS property clauses must be part of the contract.

2 Suspension and Stop-Work Orders Revised 9/20209/2021

a. General.

- (1) Suspensions of work or stop-work orders are tools available to the Government to interrupt the contractor's work in appropriate situations. (See "Stop Work Order" ~~example in Procurement Templates on the Appendix to this Guidance~~; FAST website). The CO should assure ~~that~~ the appropriate clauses governing stop work and suspensions of work are in all contracts.
- (2) The CO's suspension or stop-work order should be in writing and include information required by the clauses, such as:
 - (a) A description of the work to be suspended/stopped;
 - (b) Instructions concerning the contractor's issuance of further orders for materials or services;
 - ~~*(c)~~ Guidance to the contractor on action to be taken on any affected subcontracts;
 - and
 - ~~(e)~~(d) Other suggestions for minimizing the contractor's costs.
- (3) If either the suspension or stop-work is used, the interruption of work should not be for an unreasonable length of time. Also, the CO should work with the program official, legal counsel, and others supporting the program, to resolve the outstanding issues, and make a decision to terminate the contract, cancel the suspension or stop-work order, or continue the suspension or stop-work order while the issues are being resolved.

b. *Suspensions.*

(1) Suspensions may be used in fixed-price construction or architect-engineer contracts in situations such as:

- (a) Delays caused by waiting for a decision from FAA;
- (b) Weather-related reasons;
- (c) Technological advancement;
- (d) Production or engineering breakthroughs;
- (e) Realignment of FAA programs or objectives;
- (f) Public safety concerns;
- (g) Emergency situations or other urgent conditions;
- (h) Differing site conditions; or
- (i) Violation of substantive contract terms, including FAA's smoking, harassment-free workplace, or other policies.

(2) Generally, the decision to suspend work should be made jointly by the CO and program official. However, in cases of public safety concerns, emergency situations, or other urgent conditions, the CO may:

- (a) Suspend work pending discussion with the program official;
- (b) Notify the contractor orally and follow-up immediately with a written notice.

- c. *Stop-work Orders*. Stop-work orders may be considered in supply, service or research and development contracts when the work must be interrupted pending a decision by the Government.

3 Conversion of FAR Contracts to AMS Revised 9/2020

~~6~~a. Contracts awarded under the Federal Acquisition Regulations (FAR) system are not automatically converted to AMS contracts. The CO, jointly with the program official and legal counsel, should consider the merits of converting existing FAR contracts to AMS. Circumstances where conversion may benefit both FAA and contractors include contracts with:

- (1) A potential for litigation (to include clause 3.9.1-1 Contract Disputes);
- (2) A significant term or delivery schedule remaining;
- (3) Potential of new work being added to the existing contract; or
- (4) One or more options.

~~7~~b. The above list is not all-inclusive. COs may consider other situations if they believe the conversion would be advantageous. Contracts near completion, relatively inactive, or the result of extensive negotiation of clauses may not need to be converted. In all cases, converting a contract from FAR to AMS, whether in whole or in part, requires legal counsel's review before bilateral signature of the parties.

4 Contract Closeout Revised 9/2020/2021

a. ~~a.~~-*Background*. -Closeout of contract files occurs at the end of the contract administration process. The CO should assure file integrity throughout the life of the contract.- Maintaining an accurate record of contract modifications and obligations facilitates contract closeout, and also minimizes costs associated with administration and closeout processes. -Timely closeout ~~deobligates~~obligates excess funds and returns the excess funds for possible use elsewhere. The time frame for closing a contract is based on both the type of contract and date of physical completion. AMS Guidance regarding both Records Retention and Electronic Contract Files also applies.

b.

b. Definitions.

(1) ~~(1)~~ A contract is considered to be physically complete when:

- (a) ~~(a)~~ The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
- (b) ~~(b)~~ The contractor has performed all services and the Government has accepted the services;
- (c) ~~(c)~~ All option provisions, if any, have expired; and
- (d) ~~(d)~~ The Government has given the contractor a notice of complete contract termination.

(2) ~~(2)~~ A purchase order, or delivery order against a Federal Supply Schedule contract, is considered ~~to be~~ physically complete when:

- (a) ~~(a)~~ Property or services have been received within the terms of the contract;
- (b) ~~(b)~~ Final payment has been made to the contractor; and
- (c) ~~(c)~~ The recipient acknowledges ~~the~~ acceptance of the goods/services in Procurement System (applicable only when 3-way matching is used per AMS Invoice Guidance).

c. c. Time Frames. - Closeout of contract files should occur during the time frames identified below, as evidenced by completion of the "Contract Closeout Checklist" ~~or the closeout section of the "Purchase Order/GSA/FSS Order File Checklist and Completion Statement"~~ (See Procurement ~~Forms in Templates on the FAST~~) ~~Website~~). Closeout in Procurement System is required for all contracts, purchase orders, and delivery/task orders.

- (1) ~~(1)~~ Files for contracts using commercial and simplified purchase procedures must be closed out upon final payment.
- (2) ~~(2)~~ Contract files for firm-fixed-price contracts, other than those using commercial and simplified purchase procedures, must be closed out within 6 months after the date on which the CO receives evidence of physical completion (for example, signed receipt or delivered product).
- (3) ~~(3)~~ Contract files for contracts requiring settlement of indirect cost rates must be closed out

within 36 months of the month in which the CO receives evidence of physical completion.

(4) (4)-Contract files for all other contracts must be closed out within 20 months of the month in which the CO receives evidence of physical completion.

(5) (5) All delivery/task orders must be individually closed out within the time frame established for the basic contract as specified in subsections (2), (3), or (4) above. The time frame for the delivery/task order begins when the CO receives evidence of physical completion of the delivery/task order.

d. ~~d.~~ *Preparation for Closeout.* - To prepare for contract closeout, 60 days prior to either final delivery or estimated contract or interagency agreement completion date, the CO should perform a comprehensive review of the contract or interagency agreement to determine whether any documentation is missing and whether any step in the closeout process can be initiated before physical completion. If documents are missing, the CO should attempt to obtain them in a timely manner and insert them into the file. To determine whether steps in the closeout process can begin before the contract or interagency agreement is physically complete, the CO should review the "Contract Closeout Checklist and Completion Statement." Following are examples of actions the CO may be able to take before the contract is physically complete:

(1) (1)-Ensure ~~that~~ the contractor has a current list of contractor employees holding FAA security badges and verify that the list corresponds to the Office of Personnel Security's (AXP) list.

(2) (2)-Ensure ~~that~~ all information in Procurement System is current and correct.

(3) (3)-Reconcile the contract's funding status and invoice payment log with Accounts Payable. Identify final invoices. (Contracts and Interagency Agreements).

(4) (4)-If the contract includes a "Patent Rights" clause, check to see whether final patent or royalty reports have been received.

(5) (5)-If the contract includes "Government Property" clauses or contractor-acquired property, ensure that the property administrator or Contracting Officer's Representative provides disposition instructions to the Contractor. (Contracts and Interagency Agreement).

e. e.-Closeout Procedures.- When the contract or interagency agreement is physically complete, the CO is responsible for initiating contract closeout. The contract file should not be closed if the contract is in litigation or under appeal. When closing both fixed-price and cost-type contracts, the CO must verify ~~that~~ the documents and activities included in the "Contract Closeout Checklist and Completion Statement" have been received or are complete. After completion of the "~~Contract Closeout Checklist~~" closeout checklist and notification of final payment from Accounts Payable, the CO must complete and sign a "the completion statement in the Contract File Closeout Checklist and Completion Statement" (~~Appendix 11~~). template located in Procurement Templates. For purchase orders (PO) or GSA Federal Supply Schedule (FSS) orders, the CO will use the closeout portion of the "Purchase Order/GSA/FSS Order File Checklist" in place of the "~~Contract Closeout Checklist~~" and "~~Contract File Completion Statement~~". To facilitate receipt of required closeout documentation, the CO will need to take some or all of the following actions:

- (1) ~~(1)~~ Reconcile the contract's funding status and invoice payment log with Accounts Payable. To accomplish this, contact the Finance Office and obtain reports documenting the obligations and expenditures under the contract.
- (2) ~~(2)~~ Send a memorandum to the program official to confirm contract completion.
- (3) ~~(3)~~ Send a memorandum to the COR requesting termination of all contractor personnel accounts on contract-specific FAA systems (~~See Appendix 12 for memorandum~~). The COR should return the signed memo to the CO within 30 days. For contractor employees transferring to a follow-on contract for the same services, the CO must notify AXP of all employee transfers in order to retain such contractor accounts.
- (4) ~~(4)~~ For all cost-type contracts not closed with Quick Closeout procedures, the CO must request the Headquarters Cost/Price Analysis Services group (AAP-500) to initiate a DCAA audit.
- (5) ~~(5)~~ Send a memorandum to the Property Administrator requesting completion and transfer of the Government Property section of the contract file. (Note: the CO must sign the property report submitted by the Property Administrator).
- (6) ~~(6)~~ Send a letter to the contractor indicating that the contract is complete and requesting required documents. Required documents might include:
 - (a) ~~(a)~~ Final voucher.
 - (b) ~~(b)~~ Confirmation of settlement of subcontracts.
 - (c) ~~(c)~~ Government Furnished Property (GFP) and Contractor Acquired Property (CAP) inventory.

(d) ~~(d)~~-Report of inventions and subcontracts, if applicable (AMS Clause 3.5-12).

(e) ~~(e)~~-Patent and royalty reports.

(f) ~~(f)~~-Contractor's release.

(g) ~~(g)~~-Contractor's assignment of refunds, rebates, credits, and other amounts.

(h) ~~(h)~~-List of contractor personnel holding FAA badges, indicating the badge numbers and when they were returned to AXP.

(7) ~~(7)~~-Review and approval of the final voucher should include:

(a) ~~(a)~~-Verification that all contractual requirements have been satisfied.

(b) ~~(b)~~-Completion of any fee adjustments.

(c) ~~(c)~~-Verification that contractual funding limitations have not been exceeded.

(d) ~~(d)~~-Identification of any offsets applied.

(e) ~~(e)~~-Verification of accuracy of Contractor Release and Assignment.

(f) ~~(f)~~-Verification that all previous Contractor vouchers have been paid.

(g) ~~(g)~~-Approval for payment with signature and date.

(h) ~~(h)~~-~~Deobligation~~De-obligation modification processed and distributed for any funds determined to be in excess.

(8) ~~(8)~~-Completion and submittal of the Contractor Performance Assessment Reporting System (CPARS) evaluation for the contract.

(9) ~~(9)~~

(9) Closeout in Procurement System.

f-

f. *Quick-closeout Procedures.* In some circumstances, the CO may determine that a contract is a candidate for quick closeout. Quick closeout allows the CO to negotiate the settlement of indirect costs without a DCAA audit and in advance of the determination of final indirect cost rates. The procedures for quick closeout are the same as for regular closeout except that a DCAA audit is not

requested. The determinations of final indirect costs under quick closeout procedures are final for the contracts it covers and no adjustments are made to other contracts for over or under recoveries of costs allocated or allocable to the contracts covered by the advance agreement. Additionally, indirect cost rates used in the quick closeout of a contract are not considered a binding precedent when establishing the final indirect cost rates for other contracts.

(1) ~~(1)~~ To determine whether a contract is a candidate for quick closeout, the contract must meet the following criteria:

(a) ~~(a)~~ The contract is physically complete;

(b) ~~(b)~~ The amount of unsettled indirect costs is not more than \$5,000,000 and the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15% of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

(c) ~~(c)~~ Agreement can be reached on a reasonable estimate of allocable dollars.

(2) ~~(2)~~ After the CO has made a decision that the use of quick closeout procedures is appropriate, the CO must:

(a) ~~(a)~~ Ensure adequate rationale for the decision is included in the file;

(b) ~~(b)~~ Require the contractor to submit a final voucher and a summary of all costs by cost element and fiscal year for the contract(s) in question, as well as a copy of the contractor's final indirect cost rate proposal for each fiscal year quick closeout is involved;

(c) ~~(c)~~ Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(i) ~~(i)~~ The contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(ii) ~~(ii)~~ Any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information;

(d) ~~(d)~~ Review the contract(s) for indirect cost rate ceilings and any other contract

limitations, as well as the rate history information;

(e) ~~(e)~~ Establish final indirect cost rates using one of the following rates:

(i) (i)-The contract's ceiling indirect cost rates, if applicable, and if less than paragraphs (e)(ii) through (vi) of this section;

(ii) (ii) The contractor's claimed actual rates adjusted based on the contractor's indirect cost history, if less than paragraphs (e)(iii) through (vi) of this section;

(iii) (iii) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source;

(iv) (iv)-The contractor's negotiated billing rates, if less than paragraphs (e)(v) or (vi) of this section;

(v) (v)-The previous year's final rates;

(vi) (vi)-Final rates for another fiscal year closest to the period for which quick-closeout rates are being established;

(f) ~~(f)~~ If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents.

g.g. ~~Deobligation~~ De-obligation of Funds Prior to Closeout.

(1) ~~(1)~~ *Actions Before ~~Deobligation~~ De-obligation.* For contracts that require the establishment of final cost rates, after completion of contractor performance the CO may ~~deobligatede-obligate~~ unused funding prior to the finalization of the contractor's final cost rates. Prior to ~~deobligatingde-obligating~~ unused funding, the CO must:

(a) ~~(a)~~ Confirm ~~that~~ contractor performance, including any applicable closeout requirement, is complete except for the establishment of final rates; and

(b) (b)-Receive written authorization from the funding program office that the funds may be ~~deobligatedde-obligated~~ (a purchase request requesting the ~~deobligationde-obligation~~ of funds satisfies this requirement).

(2) ~~(2)~~ *Reconciliation.* -After ~~establishment-of~~ establishing the contractor's final cost rates, FAA will

reconcile the final funding requirement.

- (a) ~~(a)~~-If the contract funding required after establishment of final cost rates is greater than the amount established prior to the agreement on final cost rates, the FAA program office will provide the necessary additional appropriation and funding, and the CO will modify the contract to increase the final funding amount.
- (b) ~~(b)~~-If the contract funding required after establishment of final cost rates is lower than the amount established prior to the agreement on final cost rates, the CO will further lower the final contract funding amount and the contractor will pay ~~to the~~ FAA the amount of overpayment within 60 days of written demand from FAA, or FAA may offset any overpayment from other amounts owed to the contractor. -The FAA retains all other rights to collect funds due from the contractor.

h-

h. *Contract File Documentation.* -Official closeout documentation for contracts and interagency agreements, the signed "~~Contract File Completion Statement,~~" ~~and the~~ and completed "Contract Closeout Checklist and Completion Statement" should be filed in the official contract file behind a marked tab. For POs or GSA FSS orders, the documentation should be filed in the official file and noted on the "Purchase Order/GSA/FSS Order File Checklist."

5 Final Indirect Cost Rates Revised 9/2020/9/2021

a. ~~a-~~*Cognizant Federal Agency.* -A contractor (or its operating divisions) may do business with more than one Federal agency. - To avoid inconsistent or duplicated activities, one agency is designated as the cognizant agency for settling the final indirect cost rates with the contractor. The cognizant agency, which could be FAA, is normally the one with the largest dollar amount of negotiated contracts, including options. Once an agency assumes cognizance, it should remain so for at least five years to ensure continuity and ease of administration. If at the end of the five-year period another agency has the largest dollar amount of negotiated contracts, including options, then the two agencies should coordinate and determine which will assume cognizance. -However, cognizance may transfer before the five-year period expires if circumstances warrant it and the affected agencies agree.

b-

b. *Billing Rates.*

(1) (1)-A billing rate is an indirect cost rate established temporarily for interim reimbursement of incurred indirect costs, and is adjusted as necessary pending establishment of final indirect cost rates.

(2) (2)-The cognizant Contracting Officer (CO) (or cognizant Federal agency official) or

auditor responsible for establishing the final indirect cost rates is also responsible for determining the billing rates.

- (3) (3)-The cognizant CO (or cognizant Federal agency official) or auditor establishes billing rates based on information from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the cognizant CO (or cognizant Federal agency official) or auditor should ensure billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the cognizant CO (or cognizant Federal agency official) or auditor determines the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.
- (4) (4)-Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the cognizant CO (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When the parties cannot agree, the cognizant CO (or cognizant Federal agency official) may unilaterally determine billing rates.
- (5) (5)-The elements of indirect cost and the base or bases used in computing billing rates must not be interpreted as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.
- (6) (6)-When the contractor provides the certified final indirect cost rate proposal to the cognizant CO, the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant CO/agency official or the auditor.

c. ~~c.~~ *Reimbursing Indirect Costs.* - Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

d. ~~d.~~ *Final Indirect Cost Rates.*

- (1) (1)-Final indirect cost rates must be established on the basis of CO determination procedure or auditor determination procedure. ~~The establishment~~ Establishment of a business unit's final indirect cost rates provides uniformity of approach with a contractor when more than one contract or agency is involved; economy of administration; and timely settlement under cost-reimbursement contracts.
- (2) (2)-These rates are binding for all cost-reimbursement contracts for all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency must not perform an audit of indirect cost rates when the CO determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.
- (3) (3)-Billing rates and final indirect cost rates must be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.
- (4) (4)-Final indirect cost rates must be used for contract closeout for a business unit, unless the quick-closeout procedure in AMS Procurement Guidance T3.10.1.A.11.F is used.
- (5) (5)-Within 120 days (or longer period, if approved in writing by the CO) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the CO should consider whether there are extenuating circumstances, such as:
- (a) ~~(a)~~ Pending closeout of subcontracts awaiting Government audit.
 - (b) ~~(b)~~ Pending contractor, subcontractor, or Government claims.
 - (c) ~~(c)~~ Delays in the disposition of Government property.
 - (d) ~~(d)~~ Delays in contract reconciliation.
 - (e) ~~(e)~~ Any other pertinent factors.
- (6) (6)-If the contractor fails to submit a completion invoice or voucher within the time specified in subparagraph c.(2) of this section, the cognizant CO may determine the amounts due to the contractor under the contract, and document it in a unilateral modification to the contract.
- (7) ~~(7)~~ The CO must coordinate a possible unilateral decision on final indirect rates and resolution efforts with Headquarters Procurement Legal Division, or Region or Center Assistant Chief Counsel's office, as applicable.

~~e.~~

e. *CO Determination Procedure.*

(1) (1)-The cognizant CO (or cognizant Federal agency official) is responsible for establishing the final indirect cost rates for:

(a) ~~(a)~~ Business units of a ~~multidivisional~~ multi-divisional corporation under the cognizance of a corporate administrative contracting officer (ACO) with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(b) ~~(b)~~ Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.

(c) ~~(c)~~ Educational institutions.

(d) ~~(d)~~ State and local governments.

(e) ~~(e)~~ Nonprofit organizations other than educational and state and local governments.

(2) (2)-According to AMS clause 3.2.4-5 "Allowable Cost and Payment," the contractor must submit a certified final indirect cost rate proposal to the CO (or cognizant Federal agency official) and to the cognizant auditor. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, CO, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Each contractor must submit an adequate proposal to the CO (or cognizant Federal agency official) and auditor within the 180 day period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the CO. A contractor must support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available on their website.

(3) ~~(3)~~ The auditor must submit to the cognizant CO (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(4) (4)-The cognizant CO (or cognizant Federal agency official) heads the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest must be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

~~(5)~~ The Government negotiating team must develop a negotiation position. The cognizant (5) CO must:

- (a) ~~(a)~~ Not resolve any questioned costs until obtaining adequate documentation on the costs and the contract auditor's opinion on the allowability of the costs; and
- (b) (b)-Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(6) (6)-The cognizant CO:

- (a) ~~(a)~~ Conducts negotiations;
- (b) (b)-Prepares a written indirect cost rate agreement conforming to the requirements of the contracts; and
- (c) ~~(e)~~ Prepares, signs, and places in the contractor general file:
 - (i) (i)-The disposition of significant matters in the advisory audit report;
 - (ii) (ii) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
 - (iii) (iii) Reasons why any recommendations of the auditor or other Government advisors were not followed; ~~and~~
 - (iv) (iv)-Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; ~~and~~
 - (v) Promptly distribute resulting documents to include executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications, T3.10.1-; ~~and~~

- (v) (vi)-Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

f. ~~f.~~-Auditor Determination Procedure.

(1) (1)-The cognizant Government auditor establishes final indirect cost rates for:

- (a) ~~(a)~~-Business units of a ~~multidivisional~~multi-divisional corporation under the cognizance of a corporate ACO, with that officer responsible for the determination, assisted as required by the ACO, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (b) (b)-Business units not under the cognizance of a corporate ACO, but having a resident ACO, with that officer responsible for the determination. For this purpose, a nonresident ACO is considered as resident if at least 75 percent of the time is devoted to a single contractor.
- ~~(e)~~ For business units not included, the CO (or cognizant Federal agency official) (c) will determine whether the rates will be CO or auditor determined.
- (d) (d)-Educational institutions.
- (e) ~~(e)~~-State and local governments.
- (f) ~~(f) Nonprofit~~Non-profit organizations other than educational and state and local governments

(2)-The auditor determination may be used for business units that are covered when the CO (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

- (a) ~~(a)~~-The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.
- (b) (b)-The administrative cost of CO determination would exceed the expected benefits.
- (c) ~~(e)~~-The business unit does not have a history of disputes and there are few cost problems.
- (d) (d)-The CO (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(2) ~~(3)~~ Procedures.

(a) ~~(a)~~ The contractor must submit to the cognizant CO (or cognizant Federal agency official) and auditor a final indirect cost rate proposal.

(b) ~~(b)~~ Upon receipt of a proposal, the auditor:

- (i) Audits the proposal and seeks agreement on indirect costs with the contractor;
- (ii) Prepares an indirect cost rate agreement conforming to the requirements of the contracts. The agreement must be signed by the contractor and the auditor;
- (iii) ~~(iii)~~ If agreement with the contractor is not reached, forwards the audit report to the CO (or cognizant Federal agency official) identified in the Federal Directory of Contract Administration Services Components, available on their website, who will then resolve the disagreement; and
- (iv) ~~(iv)~~ Distributes Resulting Documents. Copies of the documented audit report prepared under auditor determination or audit report prepared under auditor determination must be furnished, as appropriate, to the contracting offices and Government audit offices.

g. ~~g.~~ Certification.

(1) ~~(1)~~ Certificate of Indirect Costs. A proposal must not be accepted and no agreement be made to establish final indirect cost rates unless the contractor certifies the costs.

(a) ~~(a)~~ Waiver of Certification. The agency head, or designee, may waive the certification requirement when determined to be in the interest of the United States. The reasons for the determination documented in writing and made available to the public. A waiver may be appropriate for a contract with:

- (1) (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization; and
- (2) (ii) A state or local government, educational institution, or nonprofit organization subject to OMB Guidance “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at <https://www.federalregister.gov/documents/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (“OMB Uniform Guidance”);

~~(b)~~ (b)-Failure to certify.

(1)~~(i)~~ If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the CO may unilaterally establish the rates.

(2)~~(ii)~~ Rates established unilaterally are based on audited historical data or other available data as long as unallowable costs are excluded; and set low enough to ensure that unallowable costs will not be reimbursed.

~~(c)~~ ~~(e)~~-False Certification. The CO should consult with legal counsel to determine appropriate action when a contractor's certificate of final indirect costs is thought to be false.

~~(d)~~ (d)-Penalties for Unallowable Costs. Penalties for submission of unallowable costs in final indirect cost rate proposals are outlined in AMS clause 3.10.1-3.

6 Contract Audit Revised 9/2020

~~a.~~ ~~a~~-Contract Audit - Post Award.

~~(1)~~ ~~(4)~~-The auditor is responsible for:

(a) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs.

(b) Reviewing the financial and accounting aspects of the contractor's cost control system.

(c) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

~~(2)~~ ~~(2)~~-Audit Cognizance.- Normally, DCAA is the responsible Government audit agency.

However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies should agree on the most efficient and economical approach to meet contract audit requirements.

~~(3)~~ (3)-Assigning Audit Services. COs should coordinate with Headquarters Cost/Price Services (AAP-500) when requesting audit services directly from the responsible audit agency. DCAA's audit office locator is online at <http://www.dcaa.mil>. The audit request should include a suspense date and should identify any information needed by the CO. The responsible audit agency may decline requests for services on a case-by-case basis, if

resources of the audit agency are inadequate to accomplish the tasks. Declinations must be in writing.

7 Bankruptcy Revised 9/2020

a. ~~a-~~*General.* The CO must proactively monitor contracts to the extent practicable for indications of contractor financial difficulty, and respond appropriately to a written notification of bankruptcy. If the contractor provides the CO with a written notification of bankruptcy, the CO must protect FAA's rights and interests under contracts with the contractor.

b. ~~b-~~*Contractor Financial Difficulties.-* When the CO becomes aware of contractor financial difficulties, he or she must verify accuracy of the information, and follow the steps described below. Information relating to contractor financial difficulties should come from sources such as, but not limited to, the COR, QRO, Finance Office, Office of Inspector General, a financial institution, Dun and Bradstreet, or a newspaper article.

(1) ~~(1)~~-Determine whether the contractor is performing in a timely manner and making satisfactory progress.

(2) ~~(2)~~-Consider terminating the contractor for default if performance is untimely or otherwise unsatisfactory and the reason is within the contractor's control.

(3) ~~(3)~~-Request that the COR or QRO monitor the contract more closely if contract termination is considered unnecessary.

(4) ~~(4)~~-Notify the cognizant small and disadvantaged business utilization specialist if a small business contractor is involved.

(5) ~~(5)~~-Notify the bonding company, if appropriate.

c-

c. *Notification of Bankruptcy.-* Upon receipt of a contractor notification of bankruptcy, as required by AMS clause 3.10.1-7, "Bankruptcy," the CO must:

(1) ~~(1)~~-Furnish the notification of bankruptcy to Headquarters Assistant Chief Counsel for Procurement Law and other appropriate offices, such as finance, property, and other FAA contracting offices.

(2) ~~(2)~~-Determine the amount of FAA's potential claim against the contractor. In assessing this impact, identify and review any contracts that have not been closed out, including those that are physically completed or terminated.

~~(3)~~ Take actions necessary to protect FAA's rights and interests, including Government ~~(3)~~ property.

~~(4)~~ (4)-Consult with and furnish information to Headquarters legal counsel, as appropriate, throughout the process.

8 Reporting Executive Compensation and First-Tier Subcontract Awards Revised 9/2020

a. ~~a~~-*Scope*.- The Federal Funding Accountability and Transparency Act, as amended, requires contractors to report subcontracted award data and the total compensation of the five most highly compensated executives of the contractor and subcontractor(s).

b. ~~b~~-*Applicability*.- This reporting requirement applies to all contracts with a value of \$25,000 or more. Reporting subcontract information is limited to the first-tier subcontractor(s). -As described in AMS clause 3.13-14, there is an additional subcontract reporting exemption for contractors and subcontractors who had gross income in the previous tax year under \$300,000. -Specific reporting requirements for executive compensation are also outlined in AMS clause 3.13-14.

c. ~~c~~-*Review*.- The CO will ensure contractors comply with the reporting requirements of AMS clause 3.13-14.- Contractor reports will be reviewed as necessary to ensure the information is consistent with contract information. -In such reviews, the CO is not required to address data for which FAA would not normally have supporting information, such as compensation information required of contractors and first-tier subcontractors. -However, the CO will inform the contractor of any inconsistencies with the contract information and require that the contractor correct the report, or provide a reasonable explanation why it believes the information to be correct. -The reports may be reviewed at <http://www.fsrs.gov>.

d. ~~d~~-*Failure to Comply*.- If the contractor fails to comply with the reporting requirements, the CO will immediately bring this to the contractor's attention. -If the contractor still does not comply, appropriate contractual remedies should be taken.- In addition, the CO should make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance evaluation.

e. ~~e~~-When COs report contracting data to the Federal Procurement Data System (FPDS), certain data will then pre-populate from FPDS to assist the contractor complete and submit the reports.

9 Contractor Performance Documentation and Maintenance Revised 4/2021

a. ~~a~~-This section provides policies and establishes responsibilities for recording and maintaining

contractor performance information in the Contractor Performance Assessment Reporting System (CPARS). This section does not apply to determinations of fees under award or incentive fee contracts.

b. b. Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's record of meeting small business subcontracting objectives; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

c. ~~c.~~ Past performance evaluations must be prepared as specified in the FAA CPARS Guide, Appendix ~~11~~3. Generally, reporting is done on an annual basis and should be completed no later than sixty (60) days after the end of the applicable reporting period. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

~~d.~~

d. (1)

(1) Except as provided in this paragraph (d), FAA must prepare an evaluation of contractor performance for each contract or order that exceeds the following thresholds.

~~9~~(i) Services exceeding \$5,000,000

~~10~~(ii) Supply contracts exceeding \$10,000,000

~~11~~(iii) Construction contracts exceeding \$10,000,000

~~12~~(iv) Research & Development contracts exceeding \$5,000,000

(2) (2)-An evaluation of contractor performance is required for each order that exceeds the above specified thresholds placed against a Federal Supply Schedule contract, a task order contract or a delivery order contract, or any other ordering Agreement. Evaluations of multiple orders under an ordering contract or agreement may be combined in accordance with the guidance provided in the FAA CPARS Guide.

(3) (3)-Contracts or orders made pursuant to the Javits-Wagner-O'Day (JWOD) Act with firms under the AbilityOne program or with Federal Prison Industries, Inc. (FPI) do not require

evaluations.

~~(4)~~(4)-An evaluation may be performed for any contract or order that does not meet the above thresholds.

~~e.~~ *e.-Roles and Responsibilities.* Responsibility for completing CPARS evaluations rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order requirements and execution. The AO is responsible for entering the ratings and narratives for each evaluation performed.

~~f.~~ *f. Non-Disclosure.-* The completed CPARS evaluation must not be made available to anyone other than Government personnel and the contractor whose performance is being evaluated.

Agency support contractors must not have access to CPARS evaluations of other contractors.

C Special Contract Administration Actions for Real Property Added 9/2020

1 Real Estate Asset Management Added 9/2020

All contract documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been executed. The contract must be uploaded to the real property asset management system, and attached to the respective lease number.

2 Inspection and Acceptance of Space Added 9/2020

~~3)~~*a. Inspection.* The CO, or designated representative, should inspect the real property sufficiently in advance of the occupancy date to ensure it is acceptable and ready for use. The vendor must provide a valid occupancy permit unless the local jurisdiction does not issue occupancy permits, in which case a certified copy of the FAA Safety and Environmental Checklist will suffice.

~~4)~~*b. Acceptance.* Acceptance must be provided in writing. Any discrepancies or unfinished punch list items must be documented in the contract file.

~~a-c.~~*Deficiencies.* All substantial, deficiencies that impact the FAA's use and/or occupancy of the real property must be corrected by the Vendor before acceptance of the real property, related service, or utility service. The CO is responsible for documenting the substantial deficiencies, and for communicating them to the Vendor.

b.d. *Punch List/Inspection.* Once the substantial deficiencies are resolved, the CO must amend the contract to reflect the contract's actual commencement date. Minor deficiencies, "punch list items," should not prevent acceptance of space and commencement of rent. The items must be documented, and communicated to the Vendor. The CO, or designated representative, must conduct a follow-up inspection to ensure that the minor deficiencies are corrected. The results of the follow-up inspection will be documented in the contract file.

D Clauses Revised 9/2020

[view contract clauses](#)

E Procurement Forms Revised 9/20209/2021

[view procurement forms](#)

F

<u>Document Name</u>
Amendment of Solicitation/Modification of Contract (SF-30)

F Procurement Samples Revised 9/2021

<u>Document Name</u>
Novation Agreement
Change of Name Agreement

G Procurement Templates Added 9/2021

<u>Document Name</u>
COR Delegation Letter
Stop Work Order

H Procurement Tools and Resources Added 9/2021

<u>Document Name</u>
AMS Common Authorities for Modifications for Supplies, Services, or Construction

I Appendices Revised 9/2020/2021

~~1 Appendix—Reserved~~ Revised 7/2014

~~2 Appendix—Reserved~~ Revised 7/2014

31 Appendix - When Should a COR be Appointed Revised 9/2020/2021

When Should a COR be Appointed?

Usually Necessary:

- ☐ Contracts for supplies, services or construction with technical complexity, such as:
 - o Major systems
 - o Highly technical services such as engineering, programming, architecture and engineering (A&E) etc.
 - o Evolving technologies (e.g. NEXTGEN)
 - o Large scale construction (e.g. ATCT, ARTCC)
- ☐ Contracts with a long performance time, such as:
 - o Janitorial
- ☐ Items, services or construction requiring extensive oversight and inspection, such as:
 - o Guard services
- ☐ Contracts with a contract type other than firm-fixed-price (e.g. cost-type, T&M/LH)
- ☐ Service or construction contracts with numerous task orders (e.g. TSSC, NISC, eFAST)
- ☐ High-visibility contracts
- ☐ Contracts with numerous contractor personnel, especially when performing at an FAA site
- ☐ Contracts requiring delivery/monitoring of extensive Government furnished property
- ☐ Contracts for real property requiring extensive oversight and inspection

Usually Not Necessary:

- ☐ Contracts delivering commercial fixed-price items or services, such as:
 - o Spare parts
 - o Office equipment and maintenance
 - o Tree trimming/small landscaping projects
 - o Other items of a low complexity
- ☐ Commercial services with a short performance time, such as:
 - o Copier repair
 - o Elevator repair
 - o Small scale moving services
- ☐ Purchase orders with simple terms and conditions that require minimal oversight and inspection
- ☐ Short-term contracts to address requirements for a bona-fide emergency
- ☐ Renting Portable Storage Units or Procuring Short-term Storage Services

~~4 Appendix -- Stop-Work Order~~ Revised 4/2011

~~STOP WORK ORDER~~

~~Pending a decision from the FAA, you are hereby instructed to stop all work immediately and to make no further commitments under contract [insert number] pursuant to clause 3.10.1-9 titled "Stop Work Order." Under the requirements of this clause, please take steps necessary to minimize the incurrence of costs allocable to the period of work stoppage and advise all subcontractors and vendors to do the same. This stop-work order is in effect for 90* days from the date you receive this letter.~~

~~*A longer period may be indicated based upon mutual agreement of the parties.~~

~~5 Appendix -- Novation Agreement~~ Revised 4/2011

~~NOVATION AGREEMENT~~

~~The [insert name of transferor] (Transferor), a corporation duly organized and existing under the laws of [insert state] with its principal office in [insert city here]; the [insert name of transferee] (Transferee), [if appropriate add "formerly known as the [insert former name] a corporation duly organized and existing under the laws of [insert state] with its principal office in [insert city here]; and the United States of America (Government) enter into this Agreement as of [insert the date transfer of assets became effective] under applicable State law.~~

~~(a) The parties agree to the following facts:~~

~~(1) The Government, represented by various Contracting Officers of the [insert name(s) of agency(ies)] [insert name(s) of agency(ies)], has entered into certain contracts with the Transferor, namely: [insert contract or purchase order identifications or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."] The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.~~

~~(2) As of [insert date], the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a [insert term descriptive of the legal transaction involved between the Transferor and the Transferee.]~~

~~(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.~~

~~(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by~~

~~virtue of the above transfer.~~

~~(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.~~

~~(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.~~

~~(7) Evidence of the above transfer has been filed with the Government.~~

~~(When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below.)~~

~~(8) A certificate dated [insert date], signed by the Secretary of State of [insert name of State], to the effect that the corporate name of EFG Corporation [insert name of transferor] was changed to XYZ Corporation [insert name of transferee] on [insert date], has been filed with the Government.~~

~~(b) In Consideration of these facts, the Parties agree that by this agreement~~

~~(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.~~

~~(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.~~

~~(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.~~

~~(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.~~

~~(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.~~

~~(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.~~

~~(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.~~

~~(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee—~~

~~(i) Assumes under this Agreement; or~~

~~(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.~~

~~(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.~~

~~UNITED STATES OF AMERICA,~~

~~By _____~~

~~Title _____~~

~~{insert name of company};~~

~~By _____~~

~~Title _____~~

~~(CORPORATE SEAL)~~

~~{insert name of company};~~

~~By _____~~

~~Title _____~~

~~CORPORATE SEAL CERTIFICATE~~

~~I, {insert name of secretary}, certify that I am the Secretary of ABC Corporation, that {insert name}, who signed this Agreement for this corporation, was then {insert information} of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers.~~

~~Witness my hand and the seal of this corporation this day of _____ 19 _____. By _____~~

~~(CORPORATE SEAL)~~

~~CERTIFICATE~~

I, [insert name], certify that I am the Secretary of [insert name of company], that [insert name], who signed this Agreement for this corporation, was then [insert information] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of 19 .

By

CORPORATE SEAL

6 Appendix – Change of Name Agreement Revised 4/2011

CHANGE OF NAME AGREEMENT

The [insert new name of company] (Contractor), a corporation duly organized and existing under the laws of [insert State], and the United States of America (Government), enter into this Agreement as of [insert date] when the change of name became effective under applicable State law.

(a) ~~The parties agree to the following facts:~~

(1) ~~The Government, represented by various Contracting Officers of the [insert name(s) of agency(ies)], has entered into certain contracts and purchase orders with [insert original name of company], namely [insert contract or purchase order identifications; or delete "namely" and insert "as shown in the attached list marked "Exhibit A"] and incorporated in this Agreement by reference." The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).~~

(2) ~~[Insert former name of company], by an amendment to its certificate of incorporation, dated [insert date], has changed its corporate name to [insert new name of company].~~

(3) ~~This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.~~

(4) ~~Documentary evidence of this change of corporate name has been filed with the Government.~~

(b) ~~In consideration of these facts, the parties agree that—~~

(1) ~~The contracts covered by this Agreement are amended by substituting the name [insert new name of company] for the name [insert original name of company] wherever it appears in the contracts; and~~

(2) ~~Each party has executed this Agreement as of the day and year first above written.~~

~~United States of America,~~

By

Title

~~[Insert new name of company]~~

By

Title

~~Corporate Seal~~

~~Certificate~~

~~I, [insert name], certify that I am the Secretary of [insert new name of company]; that [insert name], who signed this Agreement for this corporation, was then [insert information] of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this [insert number] day of [insert month] 19[insert year].~~

By

~~Corporate Seal~~

72 Appendix - Guide for Creating and Maintaining Contract Administration Files for Supplies, Services, or Construction Revised 7/2021

The following guidance is intended to assist contracting personnel maintain contract files and perform contract administration. When contracting personnel invest time at contract award to create files and tracking tools, and maintain those files as changes occur, it ultimately helps reduce time required for contract administration and closeout. Organized and maintained files allow contracting personnel to quickly and easily locate documents and information when needed, making contract administration more efficient and less burdensome. The procedures outlined below provide enough detail for effective administration of large contracts. For administration of smaller contracts, contracting personnel can choose those sections that apply.

1. Establishing Contract Administration Files (or Basic Contract Files).

Contract File folders should be used for all files related to the contract. Labels on folders should be typed so they can be easily read and should include the contract number and title of contents (e.g., Basic Contract Folder, Modification Folder, Voucher/Invoice Folder). The Basic Contract File should include the documents listed in the subparagraphs below. Documents should be placed in the folder(s) in the order listed in the "Contract Organization and File Content List" (see Procurement Forms in FAST) and separated by marked tabs or in separate folders. The "Contract Organization and File Content List" should be annotated with the contractor's mailing address and fax number, contractor's point of contact and telephone numbers, Contracting Officer's Representative (COR) name and telephone number, and Quality Reliability Officer (QRO) name and telephone number.

a. Basic Contract Documents. A copy of the table of contents should be included in each folder of the Basic Contract File. (Some contracts are large enough to require more than one folder.)

1. Original Signed Contract - Sections A thru J.
2. Distribution Sheet (the Distribution Sheet should be annotated with the date each copy of the contract was distributed.
3. Requisition or procurement request (PR) and appropriate automated procurement system award form.
4. Copies of COR Delegation ~~Form~~Letter, QRO, Property Administrator, and Contract Administrator Designation memoranda.
5. Any other applicable documents listed in the Contract Organization and File Content List.

b. Contract Data Requirements List (CDRL) Folder. Copies of documents delivered under CDRLs should be filed in the order received, with each version separated by tabs.

c. Voucher/Invoice Folder(for contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing)). Each voucher/invoice should be filed with its signed voucher/invoice approval certification and record of payment. Vouchers/invoices should be filed chronologically. A financial spreadsheet should be filed on the left side of each Voucher/Invoice Folder. Guidance on creating financial spreadsheets can be found in paragraph (2)(a), below.

d. Working Copy of the Contract. A working copy of the contract should be maintained electronically and in hard copy in a binder. Both copies should be updated to reflect the most current version of the contract each time a modification is issued. To facilitate this process, all modifications should be issued with contract change pages. Changes in the contract change pages should be highlighted (e.g., bold, shaded, or italicized font).

e. Other Contract Folders. Folders should be created for the following contract documentation, as applicable:

1. Incoming Correspondence;
2. Outgoing Correspondence;
3. Subcontracts;
4. Government Furnished Property/Information;

5. Memoranda to the File;
6. Program Management Reviews/Progress /Status Reports;
7. Quality Reliability Officer (QRO) Reports;
8. Contractor and Industrial Security; and
9. Modifications.

2. Processing Vouchers/Invoices.(for contracts not subject to AMS T3.3.1A.15 Electronic Payment Requests (eInvoicing))

a. *Financial Spreadsheet.* A financial spreadsheet should be developed to track total contract obligations and invoice payments. This provides the current balance of contract funds. For contracts containing many Contract Line Item Numbers (CLINs), it may be helpful to develop a spreadsheet for each CLIN. For contracts containing task orders, it may be helpful to develop a spreadsheet for each task order. If spreadsheets are created for each CLIN or task order, a summary financial spreadsheet should be created to provide the current balance of funds for the entire contract.

b. Processing Vouchers/Invoices.

1. Review each voucher/invoice for errors;
2. Record costs and fees separately in spreadsheets;
3. Forward voucher/invoice to COR or FAA Program Office designee for review and acceptance in Procurement System, noting date sent to COR/designee;
4. Set up a "Voucher Suspense Desk File" with a copy of the approval certification; note date due to Accounts Payable. Set a suspense date a few days earlier to trigger COR/designee acceptance and release;
5. Upon confirmation of acceptance in Procurement System by COR/designee, authorize payment of invoice;
6. Make a copy of approval certification and invoice;
7. Place in voucher/invoice folder;
8. Any disallowances must be noted with a memo to the file explaining the deduction and/or rejection and steps taken to notify the contractor. A letter should be written to the contractor explaining the deduction and/or rejection and a copy included with the invoice;
9. Confirm payment was made; and
10. Conduct periodic reviews of payments with Accounts Payable.

3. Correspondence

a. Processing Incoming Correspondence.

1. Create an incoming correspondence log sheet. As correspondence is received, it should be annotated in the log and filed in the incoming correspondence folder. Completed log sheets should be filed on the right side of each folder on top of incoming correspondence. Completed log sheets can be filed in hand-written form; however, if the information is typed in an electronic document, the log can be searched electronically.

2. Incoming correspondence by serial number, CDRL number or reference, subject, and date.
3. Review the correspondence and take action as required. If the correspondence requires COR review and/or action, be sure to give the COR a suspense date and file a copy of the e-mail or memo and correspondence in a "COR Suspense Desk File."
4. If the appropriate action includes providing a response to the contractor, prepare a written response using the outgoing correspondence procedures described in paragraph (3)(b), below.

b. Processing Outgoing Correspondence.

1. Create an outgoing correspondence log sheet. Completed log sheets should be filed on the right side of each folder. Completed log sheets can be filed in hand-written form; however, if the information is typed in a Microsoft Word document, the log can be searched electronically.
2. Log all outgoing correspondence using the next available serial number, entering CDRL number or reference, subject, and date. (Note: to make outgoing correspondence easier to track, it can be helpful to include in the correspondence serial number the calendar or fiscal year and program acronym.)
3. When preparing outgoing correspondence, it is helpful to create an electronic outgoing correspondence directory to create and store electronic copies of correspondence. The serial number from the outgoing correspondence log should be typed in the top right corner of the outgoing letter. The subject line of the letter should be included in the log for quick reference.
4. The file copy of letters to the contractor should be filed in the outgoing correspondence folder with relevant documents.

4. Processing Modifications to the Basic Contract

a. Preparing the Modification.

Each modification should include an SF-30 Amendment of Solicitation/Modification of Contract (SF-30) or appropriate automated procurement system modification form to meet the requirements of the specific modification. If an SF-30 is used to award the modification, the file must also contain the automated procurement system modification form.

1. A modification summary, each page of which should be annotated with the contract, requisition, modification, and page numbers. The modification summary should include:
2. A preamble summarizing all changes included in the modification.
3. A section by section, detailed description of the changed or modified parts of the contract. This description should include from/to statements to explain the change.
4. If funds are involved, Section G is always modified to show the new CLIN and appropriation data and amount as well as the affect the modification has on total contract value. This amount should match the amount on the SF-30 and automated procurement system modification form.
5. Contract change pages (with changes highlighted) for the working copy of the contract. The modification number should be printed in the top left corner of each modified page.

b. Distributing the Modification. Prepare a Distribution Sheet to document proper distribution of the modification. Annotate the Distribution Sheet with the date distribution was made.

c. Filing the Modification. The modification file should include the documents listed in the subparagraphs below. If the modification is large enough to be filed in its own folder, it is helpful to include a table of contents listing the modification and all other supporting documents included in the folder. Copies of the modified/changed contract pages should be filed in the working copy of the contract. The electronic version of the working contract should be updated to include the changed pages.

1. Signed SF-30 and automated procurement system modification form, the modification, and any associated documents (e.g., memoranda to the file, Determinations and Findings, contractor proposals, negotiation memoranda)
2. Requisition or PR.
3. Distribution Sheet.
4. Any other applicable documents.

d. Other Actions Related to Modifications:

1. Update or create appropriate financial spreadsheets (described in paragraph 2.a); and
2. Create a Modification Summary Table. This document provides a quick reference documenting by modification number the description, type (bilateral or unilateral), dollar amount, and date of each modification. The electronic version of the table can be searched, allowing quick retrieval of modification information.

5. Preparing Memoranda to the File.

Typed or hand-written notes should be prepared to document telephone calls and meetings, and filed in a single folder as memoranda to the file. These notes should include a list of participants, the topic, the date, and action items assigned for each telephone call and meeting.

6. Maintaining the Subcontract File.

If applicable, ensure that the contract has an approved Subcontracting Plan that has been incorporated into the contract by reference and has been made an attachment to the basic contract. File copies of all subcontracting documentation in the Subcontract File. Ensure that the contractor submits the required subcontracting information to the Electronic Subcontracting Reporting System (eSRS) electronically in accordance with AMS clause 3.6.1-4 "Small, Small Disadvantaged, Women-Owned, Service-Disabled Veteran Owned Small Business, and HUBZone Small Business Subcontracting Plan.

7. Processing CDRLs

a. Submission and Review of CDRLs. The contractor should submit CDRLs in hard copy or electronically in accordance with the contract (Block 15 of CDRL). Procedures should be established to ensure that all CDRLs are reviewed by the CO and responsible program/technical representatives and that comments are provided to the CO in a timely manner. Most CDRLs have a time limit for Government review and response. The document transmitting comments to the CO should be filed so it can be used to support COR/technical review.

b. Processing Comments and Changes to and Approving CDRLs. CDRL discrepancy forms should be developed to transmit comments to the contractor. Comments regarding CDRLs and approval of CDRLs should be transmitted to the contractor under a transmittal letter prepared by the CO. The transmittal letter should include re-submittal requirements if applicable. The transmittal letter should be filed in the outgoing correspondence folder. Changes to CDRLs, including extensions to submission or review dates, should include adequate consideration. These revisions must be documented in a contract modification establishing the new terms.

c. Tracking CDRLs. The CO should create a tracking system to manage submission of all CDRLs.

~~83 Appendix - Contract File Completion Statement~~ Revised 4/2011

~~CONTRACT FILE COMPLETION STATEMENT~~

~~Contract Administration Office (If different from the Contracting Office):~~

~~Name:~~ _____

~~Address:~~ _____

~~Contracting Office Name:~~ _____

~~Address:~~ _____

~~Contract No.~~ _____

~~Last Modification No.:~~ _____

~~Last Call or Order No.:~~ _____

~~Contractor's Name:~~ _____

~~Address:~~ _____

~~Dollar Amount of Excess Funds (if any):~~ _____

~~Voucher Number and Date, if Final Payment has been made:~~

~~Voucher No.:~~ _____ ~~Date:~~ _

~~Invoice No. and date, if final approved invoice forwarded to disbursing office or other agency/activity~~

~~Voucher No.:~~ _____ ~~Date:~~ _

~~9 Appendix—Reserved~~ Revised 7/2014

~~10 Appendix—Common Authorities for Modifications for Supplies, Services, or Construction~~ Revised 10/2020

~~As described in AMS Procurement Guidance T3.10.1, contract terms may be modified by the Contracting Officer (CO) when in the best interest of FAA. Modifications can either be bilateral or unilateral:~~

~~1. Bilateral modification: a contract modification jointly agreed to by the CO and contractor.~~

~~2. Unilateral modification: a contract modification made by the CO that does not require concurrence by the contractor.~~

~~To issue a modification, the CO must have the authority to do so. The basis for the authority to modify a contract may be an AMS clause incorporated into a contract, a law or statute, or simply the~~

~~terms and conditions of the contract.~~

~~The tables below provide varying actions that support a contract modification. The actions covered include change orders, administrative changes, supplemental agreements, and other actions that support a modification. Each table describes:~~

~~1. The type of action;~~

~~2. Whether it is a bilateral or unilateral modification; and~~

~~3. Reasons and authorities supporting a modification depending on the kind of requirement (i.e., supply, service, or construction) and type of contract (i.e., fixed price or cost reimbursement).~~

~~Each table also provides guidance into how each factor relates to Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract.~~

Table 1: Change Orders

~~Unilateral Modification (SF 30: Change Order (Block 13A), Unilateral (Block 13E))~~

Reasons for Modification	Authority
Supplies (Fixed-Price) Change to: <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	AMS Clause 3.10.1-12, Changes-Fixed-Price
Services (no supplies to be furnished) Change to: <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance	AMS Clause 3.10.1-12/alt1, Changes-Fixed-Price Alternate I
Services (supplies to be furnished) (Fixed-Price) Change to: <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance	AMS Clause 3.10.1-12/alt2, Changes-Fixed-Price Alternate II

<input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	
A&E or Other Professional Services (Fixed-Price) Change to: <input type="checkbox"/> General scope	AMS Clause 3.10.1-12/alt3, Changes Fixed-Price Alternate III
Transportation Services (Fixed-Price) Change to: <input type="checkbox"/> Specifications <input type="checkbox"/> Work or services <input type="checkbox"/> Place of origin <input type="checkbox"/> Place of delivery <input type="checkbox"/> Tonnage to be shipped <input type="checkbox"/> Amount of Government furnished property Place of delivery <input type="checkbox"/> Tonnage to be shipped <input type="checkbox"/> Amount of Government furnished property	AMS Clause 3.10.1-12/alt4, Changes Fixed-Price Alternate IV
R&D (Fixed-Price) Change to: <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Place of Inspection, Delivery, or Acceptance	AMS Clause 3.10.1-12/alt5, Changes Fixed-Price Alternate V
Supplies (Cost-Reimbursement) Change to: <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery	AMS Clause 3.10.1-13, Changes Cost-Reimbursement

<p>Services (no supplies to be furnished) (Cost-Reimbursement)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance 	<p>AMS Clause 3.10.1-13/alt1, Changes—Cost Reimbursement Alternate I</p>
<p>Services (supplies to be furnished) (Cost-Reimbursement)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery 	<p>AMS Clause 3.10.1-13/alt2, Changes—Cost Reimbursement Alternate II</p>
<p>Construction (Cost-Reimbursement)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Plans and Specifications or Instructions 	<p>AMS Clause 3.10.1-13/alt3, Changes—Cost-Reimbursement Alternate III</p>
<p>Facilities (Cost-Reimbursement)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> General Scope 	<p>AMS Clause 3.10.1-13/alt4, Changes—Cost Reimbursement Alternate IV</p>
<p>R&D (Cost-Reimbursement)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Place of Inspection, Delivery, or Acceptance 	<p>AMS Clause 3.10.1-13/alt5, Changes—Cost Reimbursement Alternate V</p>
<p>Time and Materials or Labor Hours</p>	<p>AMS Clause 3.10.1-14, Changes— Time and Materials or Labor Hours</p>

<p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Description of Services <input type="checkbox"/> Time of Performance <input type="checkbox"/> Place of Performance <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method of Shipment or Packing <input type="checkbox"/> Place of Delivery <input type="checkbox"/> Amount of Government Furnished Property 	
<p>Construction, Dismantling, Demolition, or Removal of Improvements</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Drawings, Designs, or Specifications <input type="checkbox"/> Method or Manner of Performance <input type="checkbox"/> Government Furnished Facilities, Equipment, Materials, Services, or 	<p>AMS Clause 3.10.1-15, Changes- Construction, Dismantling, Demolition, or Removal of Improvements</p>
<p>Site</p> <ul style="list-style-type: none"> <input type="checkbox"/> Accelerate the Performance of the Work 	
<p>Construction (Changed Conditions)</p> <p>Change to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Drawings or Specification within the Scope of the Contract 	<p>AMS Clause 3.10.1-16, Changes and Changed Conditions</p>

Table 2: Administrative Changes

~~Unilateral Modification (SF 30: Administrative Change (Block 13B), Unilateral (Block 13E))~~

Reasons for Modification	Authority
Accounting Code Change	AMS Procurement Guidance T3.10.1
COR Change	AMS Procurement Guidance T3.10.1
Change of Name Agreement	AMS Procurement Guidance

	T3.10.1
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Table 3: Supplemental Agreements

Bilateral Modifications (SF 30: Supplemental Agreement (Block 13C), Bilateral (Block 13E))

Reasons for Modification	Authority
Negotiated Price or Other Adjustment Resulting from Changes Clause (Increase or Decrease)	Reference Applicable Changes Clause
Change in Term or Conditions or Order	Reference Applicable Changes Clause
Adjustments to Wage Determinations and collective bargaining agreements	AMS Clause 3.6.2 30, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts)
Novation Agreement and Change of Name	AMS Procurement Guidance T3.10.1 & AMS Clause 3.10.1 25, Novation and Change of Name Agreements
Settlement of Agreement Under the Disputes Clause	AMS Clause 3.9.1 1, Contract Disputes
Assignment of Claims	AMS Clause 3.3.1 15, Assignment of Claims
Extension of Delivery Date of Performance Period	Reference Applicable Changes Clause

Table 4: Other

Unilateral Modifications (SF 30: Other (Block 13D), Unilateral (Block 13E))

Reasons for Modification	Authority
Option for Increased Quantity (Specific Line Item)	AMS Clause 3.2.4 32, Option for Increased Quantity
Option for Increased Quantity (Separately Priced Line Item)	AMS Clause 3.2.4 33, Option for Increased Quantity—Separately Priced Line Item
Option to Extend Services	AMS Clause 3.2.4 34, Option to Extend Services
Option to Extend the Term of the Contract	AMS Clause 3.2.4 35, Option to Extend the Term of the Contract
Termination for Convenience of the	AMS Clause 3.10.6 1, Termination

Government (Fixed-Price)	for Convenience of the Government (Fixed-Price)
Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)	AMS Clause 3.10.6-2, Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)
Termination (Cost-Reimbursement)	AMS Clause 3.10.6-3, Termination (Cost-Reimbursement)
Termination (Cost-Reimbursement) (Construction)	AMS Clause 3.10.6-3/alt1, Termination (Cost-Reimbursement) Alternate I
Termination (Cost-Reimbursement) (Contracts with Agencies of the Federal Government, or state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt2, Termination (Cost-Reimbursement) Alternate II
Termination (Cost-Reimbursement) (Construction with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt3, Termination (Cost-Reimbursement) Alternate III
Termination (Cost-Reimbursement) (T&M and LH)	AMS Clause 3.10.6-3/alt4, Termination (Cost-Reimbursement) Alternate IV
Termination (Cost-Reimbursement) (T&M and LH with agencies of the Federal Government, state, local or foreign governments or their agencies)	AMS Clause 3.10.6-3/alt5, Termination (Cost-Reimbursement) Alternate V
Default (Fixed-Price Supply and Service)	AMS Clause 3.10.6-4, Default (Fixed-Price Supply and Service)
Default (Fixed-Price R&D)	AMS Clause 3.10.6-5, Default (Fixed-Price Research and Development)
Default (Fixed-Price Construction)	AMS Clause 3.10.6-6, Default (Fixed-Price Construction)
Availability of Funds	AMS Clause 3.3.1-10, Availability of Funds
Availability of Funds for the Next Fiscal Year	AMS Clause 3.3.1-11, Availability of Funds for the Next Fiscal Year
Excusable Delays	AMS Clause 3.10.6-7, Excusable Delays
Government Delay of Work	AMS Clause 3.10.1-11, Government Delay of Work
Government Property	AMS Clause 3.10.3-2, Government Property – Basic Clause

Government Property (Fixed Price)	AMS Clause 3.10.3-2/alt1, Government Property—Basic Clause Alternate I
Government Property (T&M/LH or Cost Reimbursement)	AMS Clause 3.10.3-2/alt2, Government Property—Basic Clause Alternate II
Government Property Consolidated Facilities	AMS Clause 3.10.3-3, Government Property Consolidated Facilities
Government Property (Facilities Acquisition)	AMS Clause 3.10.3-6, Government Property (Facilities Acquisition)
Government Property (Facilities Use)	AMS Clause 3.10.3-7, Government Property—Facilities Use
Government Property (Facilities Use) (Research)	AMS Clause 3.10.3-7/alt1, Government Property (Facilities Use). Alternate I
Suspension of Work	AMS Clause 3.10.1-8, Suspension of Work
Disputes (Continued Performance)	AMS Clause 3.9.1-1, Contract Disputes
Variation in Quantity (Fixed Price contracts for supplies and services that involve the furnishing of supplies)	AMS Clause 3.2.2.8-2, Variation in Quantity
Variation in Estimated Quantities (Fixed Price Construction)	AMS Clause 3.2.2.8-4, Variation in Estimated Quantities

Table 5: Other

~~Bilateral Modifications (SF 30: Other (Block 13D), Bilateral (Block 13E))~~

Reasons for Modification	Authority
Addition of new work using a single source procurement (out of scope changes, additional quantities, time extensions that constitute new work, etc.)	AMS Policy 3.2.2.4

11 FAA CPARS Guide Revised 4/20219/2021

FAA Use of Contractor Performance Assessment Reporting System (CPARS)

1.0 Introduction

This Guide assigns responsibilities and provides procedures for systematically assessing contractor

performance in accordance with AMS Procurement Guidance T3.10.1B.9.

1.1 Background

The Contractor Performance Assessment Reporting System (CPARS) is a paperless contracting initiative housed and maintained by the DoD. CPARS has been mandated for use across all Federal Government agencies. Use of the CPARS ensures that the FAA's contract performance evaluations will be entered into the CPARS database to enhance the centralized data repository of contractor performance information. All CPARS evaluations must be initiated and completed electronically within the system. Information on CPARS is available on the CPARS website at www.cpars.gov.

1.2 Purpose

The primary purpose of the CPARS is to ensure current and accurate data on contractor past performance is available for use in source selections. The completed past performance assessments are available through CPARS. In addition to the sources of information outlined in AMS Procurement Guidance T3.2.2.3B.2, the Contracting Officer may use information available through CPARS to support responsibility determinations of prospective contractors. Senior FAA and contractor officials may also use the information derived from the CPARS for other management purposes consistent with AMS Guidance.

CPARS assesses a contractor's performance, both positively and negatively as appropriate, providing a record on a given contract during a specified period of time. Each assessment must be based on objective data (or measurable, subjective data when objective data is not available) supportable by program and contract management data (see Section 1.4). CPARS performance expectations should be addressed in the Government and contractor's initial post-award meeting.

1.3 Responsibility for Completing CPARS Assessments

Responsibility for completing quality CPARS assessments in a timely manner rests with the Assessing Official (AO), who may be the Program Manager (PM), the Contracting Officer's Representative (COR), or the other individual familiar with the contract, program, project, or task/job/delivery order execution. The AO shall be responsible for entering the ratings and narratives for each evaluation performed.

The CPARS process is designed with checks-and-balances to facilitate the objective and consistent evaluation of contractor's performance. Both the Government's and contractor's perspectives are captured in the CPARS evaluation.

1.4 CPAR Evaluation Methodology

The value of the CPARS to a future source selection team is dependent on the level of effort the AO takes in preparing a quality and timely narrative to accompany the CPAR's ratings. It is paramount the AO submits a rating consistent with the definitions of each rating and thoroughly describes the circumstances supporting the rating. The definitions of each rating, together with related guidance for preparing the narrative, are provided in Attachment 1.

Each evaluation must be based on objective data (or subjective data when objective data is not available) supported by program and contract management records. The following sources of data are recommended:

- ☐ Contractor operations reviews
- ☐ Status and progress reviews
- ☐ Production and management reviews
- ☐ Management and engineering process reviews (e.g. risk management, requirements management, etc.)
- ☐ Cost performance reports and other cost and schedule metrics
- ☐ Other program measures and metrics such as:
 - o Measures of progress and status of critical resources
 - o Measures of product size and stability
 - o Measures of product quality and process performance
 - o Customer feedback/comments and satisfaction ratings
- ☐ Systems engineering and other technical progress reviews
- ☐ Technical interchange meetings
- ☐ Physical and functional configuration audits
- ☐ Quality reviews and quality assurance evaluations
- ☐ Subcontracting reports
- ☐ Earned contract incentives and award fee determinations

Subjective assessments concerning the cause or ramifications of the contractor's performance may be provided; however, speculation or conjecture is prohibited.

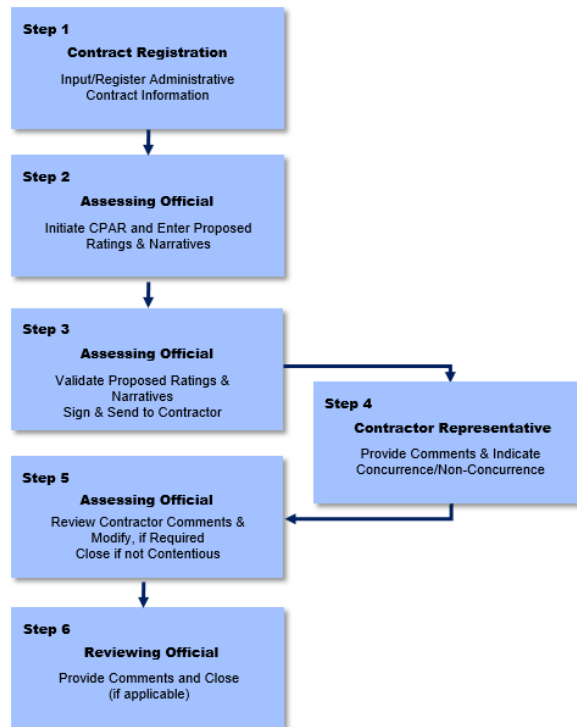
1.5 Uses of Summary CPAR Data

Summary data from the CPARS database or from the reports themselves may be used to measure the status of industry performance and support continuous process improvement. Further analysis of data from the CPARS database may be accomplished by the CPARS Focal Point for internal Government use but is not authorized for release outside the Government.

1.6 Change-of-Name/Novation

In the event of a contract novation or the change of the contractor's name, see AMS Procurement Guidance T3.10.1A.8 for guidance in these circumstances since the Dun & Bradstreet Universal Numbering System (DUNS), Commercial and Government Entity (CAGE) codes and contractor names may be affected in the CPARS. The AO of each contract affected by any such changes is ultimately responsible for ensuring that the contract information in the CPARS is current and correct.

1.7 Basic Workflow Diagram



2.0 Thresholds for Mandatory Evaluations

All contracts or orders which exceed the following thresholds must include the applicable contract clause addressing CPARS evaluations and have an evaluation completed in CPARS:

- ☐ Services contracts exceeding \$5,000,000;
- ☐ Supply contracts exceeding \$10,000,000;
- ☐ Construction contracts exceeding \$10,000,000
- ☐ Research and development contracts exceeding \$5,000,000

In addition to contracts that must have CPARS evaluations performed, FAA may choose to perform CPARS evaluations for contracts that do not meet the above thresholds.

2.1 CPARS for Indefinite-Delivery Contracts, Basic Ordering Agreements (BOAs) and Blanket Purchase Agreements (BPAs)

For indefinite-delivery contracts and BPAs, but excluding Basic Ordering Agreements, (BOAs) the dollar value of individual orders is combined to determine if the threshold to require completing CPARS evaluation(s) has been met.

The cognizant program office for the contract or agreement shall determine how CPARS evaluations' will be completed:

- ☐ One CPARS evaluation for each order,

- ☐ By combining all orders into one CPARS evaluation), or
- ☐ Combining similar orders together. For example, orders for one type of service are combined into one evaluation and orders for a different type of service are combined into separate evaluations.

Combining orders into one CPARS evaluation may not be feasible, when contracts are used by multiple activities within the agency, or when individual orders are significantly different. The cognizant program office should avoid combining into one CPARS evaluation multiple orders that are for different products or services or those that are different contract types.

When orders are combined, the narrative describing the contractor's performance on each order, both positive and negative, must be included so that the breadth and quality of information is available for source selection official use.

If a consolidated CPARS evaluation for orders is completed, the period of performance for the assessment is based on the effective date/award date of the basic contract and each subsequent, exercised option year period. Where possible, each order number and title may be included in Block 17. Narrative must be provided on the contractor's performance on each order (in Block 20) so that the breadth and quality of information on the order is available for source selection official use.

If separate CPARS for any single orders are completed, the period of performance for the assessments is based on the effective date/award date of each individual order.

For BOA orders, a CPARS evaluation must only be completed on each order meeting the threshold.

2.2 CPARs for Orders Under Federal Supply Schedules

For CPARS evaluations on Federal Supply Schedule Orders, the period of performance for the assessment must be based on the effective date/award date of the individual order.

2.3 Joint Ventures

When the joint venture on a contract using CPARS has a unique CAGE code and DUNS number, a single CPAR will be prepared for the joint venture using those CAGE and DUNS codes. If the joint venture does not have a unique CAGE code and DUNS code, separate CPARS containing identical narratives will be prepared for each participating contractor and will reference that the evaluation is based on performance under a joint venture and will identify the contractors that were part of the joint venture.

2.4 Letter or Ceiling Priced Contracts

Assessment information regarding performance under letter or ceiling priced contracts using CPARS must be included in the annual evaluation. If the final negotiated contract type is not a cost-type contract, cost information for the period such an action was in effect (if applicable) must be included under the Cost rating element in the CPARS. If the final negotiated contract type is a cost-

type, cost information for the entire period of performance must be included under the Cost rating element. The supporting narrative must fully explain the contractor's performance during the action, including throughout definitization. The contractor's performance under the undefinitized period must be separately identified but considered in the overall CPARS.

2.5 Subcontractor Assessments

Assessments shall not be completed on subcontractor performance. However, an assessment shall address the prime contractor's ability to manage and coordinate subcontractor efforts, if applicable, as well as compliance with requirements of the Small Business Subcontracting Program.

3.0 FAA Responsibilities

The FAA will:

- ☐ Establish procedures to implement CPARS. These procedures shall include training requirements for Focal Points, AOs, ROs, and Contractor Representatives to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports) and overall CPARS system administration are in place.
- ☐ Establish CPARS Focal Point(s)
- ☐ Register new contracts using CPARS in the system within 30 calendar days after contract award with the information for blocks 1-14 of the CPARS form. Registering the contract will establish the record and facilitate subsequent CPARS reporting.

3.1 CPARS Roles and Responsibilities

3.1.1 Agency Point of Contact (DOT Office of the Senior Procurement Executive (M-60))

The Agency Point of Contact is DOT, which responsible for administrative oversight of the CPARS process. Duties include:

- ☐ Obtaining Command Point of Contact access to CPARS
- ☐ Assigning of Senior Command Official(s)
- ☐ Serving on CPARS Operational Requirements Committee
- ☐ Monitoring to ensure effective implementation of the CPARS process

3.1.2 Senior Command Official (FAA Acquisition Policy Group (AAP-100))

- ☐ Obtaining Senior Command Official access to CPARS by contacting the Agency Point of Contact
- ☐ Coordination and submittal of subordinate organization CPARS Focal Points to the CPARS Program Office
- ☐ Assistance to subordinate organization CPARS Focal Points (e.g., training, monitoring, and policy)
- ☐ Evaluating quality and compliance metrics of subordinate organizations

- ☐ Providing metrics for management, as requested
- ☐ Reviewing and providing subordinate organization issues to the CPARS Focal Point and/or the CPARS Program Office

3.1.3 Focal Point (FAA Acquisition Reporting Branch (AAP-430))

- ☐ Registering contracts using CPARS in the system within 30 calendar days of contract award
- ☐ Assigning access authorization for FAA and contractor personnel (complete contract authorization based on information from the Contracting Officer, COR/Project Officer, and contractor personnel authorized to appoint a designated representative)
- ☐ CPARS account management and maintenance
- ☐ Control and monitoring of CPARS, including the status of overdue evaluations
- ☐ Establishing processes to monitor quality reports in a timely manner
- ☐ Troubleshoot user errors-if cannot be mitigated, contact the CPARS Help Desk

3.1.4 Assessing Official (AO) (FAA COR, Program/Project Manager, or Program Office Representative)

- ☐ Responsible for completing the CPARS
- ☐ Reviewing comments from the designated contractor representative once the evaluation has been returned by the contractor or after 30 days have lapsed
- ☐ After receiving and reviewing the contractor's comments on the CPAR, the AO may revise the assessment, including the narrative. The AO will notify the contractor of any revisions made to a report as a result of the contractor's comments. Such a revised report will not be sent to the contractor for further comment. The contractor will have access to both the original and final reports in CPARS when the FAA finalizes the evaluation.

3.1.5 Contractor Representative

The contractor on a given contract must designate at least one (1) representative to whom the evaluations shall be sent automatically and electronically. The name, title, e-mail address and phone number of the designated contractor representative(s) must be provided to the Contracting Officer who will, in turn, provide that information to the CPARS Focal Point for authorization access. Any changes in designated contractor personnel will be the sole responsibility of the contractor to inform the Contracting Officer or Contract Specialist who shall in turn forward the information to the CPARS Focal Point. A designated contractor representative has the authority to:

- ☐ Receive the Government evaluation from the AO
- ☐ Review, comment and return the evaluation within 60 calendar days. If the contractor desires a meeting or teleconference with the AO to discuss the CPAR, it must be requested, in writing, no later than seven calendar days from the receipt of the CPAR. The meeting or teleconference shall be held during the contractor's 60-day review period.

3.1.6 Reviewing Official (RO) (FAA Contracting Officer)

The Reviewing Official is the final arbiter when there is disagreement between the government and

the contractor. The RO must review and sign the assessment when the contractor indicates non-concurrence with the CPARS or when the contractor is non-responsive. The RO has the authority to:

- ☐ Provide narrative comment (the Reviewing Official's comments supplement those provided by the AO. They do not replace the ratings provided by the AO).
- ☐ Sign the CPARS (at this point it is considered final and is posted in the CPARS and is available for Source Selection Official use)
- ☐ Ensuring a copy of the completed evaluation is placed in the contract file

4.0 Frequency of Reporting

Generally, reporting is done on an annual basis. When an out-of-cycle CPARS is required, however, it is acceptable to complete two CPARS in a given year for the contract. Out-of-cycle CPARS do not alter the annual reporting requirement. For example, if the regular CPARS period of performance ends on 30 September 2022 and an out-of-cycle CPARS is completed which covers a performance period that ends on 1 May 2022, the next intermediate CPARS report is still required to cover the period of performance from 1 October 2021 to 30 September 2022. A period of performance overlap is only permitted when an out-of-cycle CPARS report has been prepared.

4.1 Initial Reports

An initial CPARS is required for new contracts using CPARS that have a period of performance greater than 365 calendar days. The initial CPARS must reflect evaluation of at least the first 180 calendar days of performance under the contract, and may include up to the first 365 calendar days of performance. For contracts with a period of performance of less than 365 calendar days, see “Final Reports” below.

4.2 Intermediate Reports

Intermediate CPARS are required every 12 months throughout the entire period of performance of the contract after the initial report and up to the final report. An intermediate CPARS is also required:

- ☐ Upon a significant change in the quality of contractor performance, or
- ☐ Upon a significant change within the agency, provided that a minimum of six months of performance has occurred, such a change in program management responsibility:

An intermediate CPARS must be done prior to any transfer of Assessing Official duties from one individual to another to ensure continuity.

An intermediate CPARS is limited to contractor performance occurring after the preceding normal cycle CPARS. To improve efficiency in preparing the CPARS, the CPARS may be completed together with other reviews (e.g., award fee determinations, major program events, program milestones and quality assurance surveillance records).

4.3 Final Report

A final CPARS must be completed upon contract completion or delivery of the final major end item on contract. Final Reports are to be prepared on all contracts using CPARS with a period of performance of less than 365 calendar days. The final CPARS does not include cumulative information but is limited to the period of contractor performance occurring after the preceding CPARS. The CPARS Focal Point has the authority to approve extensions when special circumstances arise.

4.4 Out-of-Cycle Reports

An Out-of-Cycle CPARS may be appropriate when there is a significant change in performance that alters the assessment in one or more evaluation area(s). The contractor may request a new assessment or the AO may unilaterally prepare a new evaluation and process a new CPARS through the automated CPARS system. The determination as to whether or not to update an evaluation will be made solely by the AO. The evaluation will follow the same workflow as the annual evaluations and will be posted electronically in CPARS after review/coordination through the FAA and contractor.

4.5 Addendum Reports

Addendum reports may be prepared, after the final past performance evaluation, to record the contractor's performance relative to contract closeout, warranty performance and other administrative requirements.

5.0 Records Retention and Disposition

All records created under this document must be retained and disposed of in accordance with agency procedures and any applicable program security requirements.

5.1 CPARS Markings and Protection

Anyone granted access to CPARS is responsible for ensuring that all CPARS are appropriately marked and handled. All CPARS forms, attachments, and working papers must be marked "FOR OFFICIAL USE ONLY/SOURCE SELECTION INFORMATION". Caution must be exercised in transmitting any CPARS as an attachment to an email message.

CPARS may also contain information that is proprietary to the contractor. Information contained on the CPARS, such as trade secrets, protected commercial information, or financial data obtained from the contractor in confidence, must be protected from unauthorized disclosure. AOs and ROs must annotate on the CPARS if it contains material that is a trade secret, etc., to ensure that future readers of the evaluations are informed and will protect as required. The following guidance applies to protection both internal and external to the FAA.

5.1.1 Internal FAA Protection

CPARS must be treated as source selection information at all times. Information contained in the CPARS must be protected in the same manner as information contained in source selection files.

5.1.2 External Government Protection

Due to the sensitive nature of CPARS, disclosure of CPARS data to contractors other than the contractor that is the subject of the report, or other entities outside the FAA, is not authorized. Disclosure of CPARS data to advisory and assistance support contractors other than the contractor that is the subject of the report is strictly prohibited. A contractor will be granted access to its CPARS maintained in CPARS by the appropriate Focal Point.

5.2 Freedom of Information Act (FOIA)

Contractor performance information is privileged source selection information. It is also protected by the Privacy Act and is not releasable under the Freedom of Information Act. Performance assessments may be withheld from public disclosure under Exemption 5 of the Freedom of Information Act. The FOIA office must coordinate the request with the CPARS PMO and local FAA Focal Point.

5.3 Use of CPARS in Source Selection

CPARS provides an assessment of ongoing performance of contractors. Each report consists of a narrative evaluation by the AO, the contractor's comments, if any, relative to the assessment and the RO's acknowledged consideration and reconciliation of significant discrepancies between the AO's evaluation and the contractor's comments.

5.4 CPARS Format

For information on the CPARS format see Attachments 2, 3, or the [CPARS website](#).

Attachment 1

Evaluation Rating Definitions (Excluding Utilization of Small Business)		
Rating	Definition	Note
Dark Blue/Exceptional	Performance meets contractual requirements and exceeds many to the Government's benefit. The contractual performance of the element or sub-element being assessed was accomplished with few minor problems for which corrective actions taken by the contractor was highly effective.	To justify an Exceptional rating, identify multiple significant events and state how they were of benefit to the Government. A singular benefit, however, could be of such magnitude that it alone constitutes an Exceptional rating. Also, there must have been NO significant weaknesses identified.
Purple/Very Good	Performance meets contractual requirements and exceeds some to the Government's benefit. The contractual performance of	To justify a Very Good rating, identify a significant event and state how it was a benefit to the Government. There must have been no

	the element or sub-element being assessed was accomplished with some minor problems for which corrective actions taken by the contractor was effective.	significant weaknesses identified.
Green/Satisfactory	Performance meets contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.	To justify a Satisfactory rating, there must have been only minor problems, or major problems the contractor recovered from without impact to the contract. There must have been NO significant weaknesses identified. Contractors will not be assessed a rating lower than Satisfactory solely for not performing beyond the requirements of the contract.
Yellow/Marginal	Performance does not meet some contractual requirements. The contractual performance of the element or sub-element being assessed reflects a serious problem for which the contractor has not yet identified corrective actions. The contractor's proposed actions appear only marginally effective or were not fully implemented.	To justify Marginal performance, identify a significant event in each category that the contractor had trouble overcoming and state how it impacted the Government. A Marginal rating must be supported by referencing the management tool that notified the contractor of the contractual deficiency (e.g., management, quality, safety, or environmental deficiency report or letter).
Red/Unsatisfactory	Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains a serious problem(s) for which the contractor's corrective actions appear or were ineffective.	To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government. A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating must be

		supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency reports, or letters).
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NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change the assessment status.

NOTE 2: N/A (not applicable) must be used if the ratings are not going to be applied to a particular area for evaluation.

Evaluation Ratings Definitions (Utilization of Small Business)		
Rating	Definition	Note
Dark Blue/Exceptional	Exceeded all negotiated subcontracting goals or exceeded at least one goal and met all of the other negotiated subcontracting goals for the current period. Had exceptional success with initiatives to assist, promote, and utilize small business (SB), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB) and service disabled veteran owned small business (SDVOSB) and Historically Underutilized Business Zone (HUBZone) small business. Complied with AMS, 3.6.1-3 Utilization of Small, Small Disadvantaged and Women-Owned, Service-Disabled Veteran Owned , and HUBZone Small Business Concerns. Exceeded any other small business participation requirements incorporated in the contract,	To justify an Exceptional rating, identify multiple significant events and state how they were a benefit to small business utilization. A singular benefit, however, could be of such magnitude that it constitutes an Exceptional rating. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. Also, there must have been no significant weaknesses identified.

	including the use of small businesses in mission critical aspects of the program. Went above and beyond the required elements of the subcontracting plan and other small business requirements of the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	
Purple/Very Good	Met all of the negotiated subcontracting goals in the traditional socio- economic categories (SB, SDB and WOSB) and met at least one of the other socio-economic goals (SDVOSB, HUBZone small businesses) for the current period. Had significant success with initiatives to assist, promote and utilize SB, SDB, WOSB, VOSB, SDVOSB, and HUBZone small businesses. Complied with AMS, 3.6.1-3. Met or exceeded any other small business participation requirements incorporated in the contract, including the use of small businesses in mission critical aspects of the program. Endeavored to go above and beyond the required elements of the subcontracting plan. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.	To justify a Very Good rating, identify a significant event and state how they were a benefit to small business utilization. Ensure that small businesses are given meaningful, innovative work directly related to the project, rather than peripheral work, such as cleaning offices, supplies, landscaping, etc. There must be no significant weaknesses identified.
Green/Satisfactory	Demonstrated a good faith effort to meet all of the negotiated subcontracting goals in the various socio-	To justify a Satisfactory rating, there must have been only minor problems, or major problems the

	<p>economic categories for the current period. Complied with AMS, 3.6.1-3. Met any other small business participation requirements included in the contract. Fulfilled the requirements of the subcontracting plan included in the contract. Completed and submitted Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate and timely manner.</p>	<p>contractor has addressed or taken corrective action. There must have been no significant weaknesses identified.</p>
Yellow/Marginal	<p>Deficient in meeting key subcontracting plan elements. Deficient in complying with AMS, 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner. Failed to satisfy one or more requirements of a corrective action plan currently in place; however, does show an interest in bringing performance to a satisfactory level and has demonstrated a commitment to apply the necessary resources to do so. Required a corrective action plan.</p>	<p>To justify a Marginal rating, identify a significant event that the contractor had trouble overcoming and how it impacted small business utilization. A Marginal rating must be supported by referencing the actions taken by the government that notified the contractor of the contractual deficiency.</p>
Red/Unsatisfactory	<p>Noncompliant with AMS 3.6.1-3, and any other small business participation requirements in the contract. Did not submit Individual Subcontract Reports and/or Summary Subcontract Reports in an accurate or timely manner.</p>	<p>To justify an Unsatisfactory rating, identify multiple significant events that the contractor had trouble overcoming and state how it impacted small business utilization. A singular problem, however, could be of such serious</p>

	<p>Showed little interest in bringing performance to a satisfactory level or is generally uncooperative. Required a corrective action plan.</p>	<p>magnitude that it alone constitutes an Unsatisfactory rating. An Unsatisfactory rating must be supported by referencing the actions taken by the government to notify the contractor of the deficiencies. When an Unsatisfactory rating is justified, the Contracting Officer must consider whether the contractor made a good faith effort to comply with the requirements of the subcontracting plan required and any other applicable clauses.</p>
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NOTE 1: Plus or minus signs may be used to indicate an improving (+) or worsening (-) trend insufficient to change assessment status.

NOTE 2: Zero percent is not a goal unless the Contracting Officer determined when negotiating the subcontracting plan that no subcontracting opportunities exist in a particular socio-economic category. In such cases, the contractor will be considered to have met the goal for any socio- economic category where the goal negotiated in the plan was zero.

Attachment 2 Instructions for Completing a Systems CPARS Evaluation

A2.1 The Systems Business Sub-Sectors (not all of which are applicable to FAA procurements) are Aircraft, Shipbuilding, Space, Ordnance, Ground Vehicles, Training Systems, or Other Systems.

A2.2 **Block 1 Name/Address of Contractor.** State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) Code. All codes can be accessed by using the on-screen “lookup” function provided in the electronic form.

A2.3 **Block 2 Type Report.** Indicate whether the CPARS is an initial, intermediate, or final report. If this is an “out-of-cycle” report, select “out-of-cycle.” If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select “Addendum.”

A2.4 **Block 3 Period of Performance Being Assessed.** State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A2.4.1 Period of Performance for Delayed Starts, Protests, or Phase In Periods. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPARS Focal Point and coordinated with the contractor. The period of performance should not already include reported efforts except when an out-of-cycle CPARS has been processed.

A2.4.2 Period of Performance for Intermediate/Final Reports. CPARS assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPARS Focal Point.

A2.4.3 Period of Performance for Out-of-Cycle Reports. Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report that will be posted to CPARS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of-Cycle report posted in the CPARS AIS, the CPARS will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A2.5 Block 4a Contract Number. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule, and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule, or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order/call number field should be used to reflect the contract/schedule/agreement number for the order/call.

A2.6 Block 4b Business Sector and Sub Sector. Select Services/IT/Operations

A2.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A2.8 Block 6 Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name).

A2.9 Block 7a Contracting Officer. Self-explanatory.

A2.9.1 Block 7b Phone Number. Include commercial phone number in the following format:
(XXX) XXX-XXXX

A2.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A2.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar only if that date is later than Block 8a, Contract Award Date.

A2.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A2.12 Block 10 Contract Percent Complete/Delivery Order Status. State the current percent of the contract that is complete. If Cost Performance Reports (CPR) or Cost/Schedule Status Reports (C/SSR) data is available, calculate percent complete by dividing cumulative Budgeted Cost of Work Performed (BCWP) by Contract Budget Base (CBB) (less management reserve) and multiply by 100. CBB is the sum or negotiated cost plus estimated cost of authorized undefinitized work. If CPR or C/SSR data is not available, estimate the percent complete by dividing the number of months elapsed by the total number of months in contract period of performance and multiplying by 100. In the event an Indefinite Delivery contract is utilized, estimate the percent complete.

A2.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order/call.

A2.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs/BPAs where orders/calls will be assessed individually, state the current obligated amount of the individual order/call, including modifications.

A2.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A2.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A2.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort.

A2.18 Block 16 (Systems) Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify overall program phase and production lot (for example, concept development, engineering and manufacturing development, low-rate initial production, or full-rate production (Lot 1)), and any specific aspects of the phase of the acquisition being evaluated. Identify milestone phases, if applicable. Block 16 (Ship Repair and

Overhaul) – Type of Availability. Not applicable to FAA contracts.

A2.19 Block 17 Contract Effort Description. This section is of critical importance to future source selection teams. The description should be detailed enough to assist a future source selection official in determining the relevance of this program to their source selection. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. For intermediate CPARs, a description of key milestone events that occurred in the review period may be beneficial (e.g., Critical Design Review (CDR), Functional Configuration Audit (FCA)), as well as major contract modifications during the period. Ensure all acronyms are identified.

Provide a complete description of the contract effort that identifies key technologies, components, subsystems, and requirements. For task/delivery/job order contracts, state the number of tasks issued during the period, tasks completed during the period, and tasks that remain active.

For contracts that include multiple functional disciplines or activities, separate them into categories to:

1. Reflect the full scope of the contract, and
2. Allow grouping of similar work efforts within the categories to avoid unnecessary segregation of essentially similar specialties or activities. Each category or area should be separately numbered, titled and described within Block 17 to facilitate cross- referencing with the evaluation of the contractor's performance within each category in Blocks 18 and 19.

A2.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?
3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR)/Summary Subcontracting Report (SSR)?

A2.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A2.21.1 Each area assessment must be based on objective data that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the AOs and other Government specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example, be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, etc.

A2.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. For example, if a contractor meets an extremely tight schedule, a dark blue (exceptional) may be appropriate, or meeting a tight schedule with few delinquencies, a green (satisfactory) with a plus sign assessment may be given in recognition of the inherent schedule risk. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative

supporting the Block 18 ratings.

A2.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A2.21.4 Many of the evaluation areas in Block 18 represent groupings of diverse elements. The AO should consider each element and use the area rating to highlight significant issues. In addition, the AO should clearly focus on the contractor's "results" as they may be appropriate for the period being assessed in determining the overall area rating.

A2.21.5 Evaluate all areas which pertain to the contract under evaluation unless they are not applicable (N/A).

A2.21.6 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A2.21.7 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A2.21.8 Ratings will be in accordance with the definitions described in Attachment 2, "Evaluation Ratings Definitions."

A2.22 Block 18a Technical (Quality of Product). This element is comprised of an overall rating and six sub-elements. Activity critical to successfully complying with contract requirements must be assessed within one or more of these sub-elements. The overall rating at the element level is the AO's integrated evaluation as to what most accurately depicts the contractor's technical performance or progress toward meeting requirements. This assessment is not a roll-up of the sub-element assessments.

A2.22.1 Block 18a(1) Product Performance. Assess the achieved product performance relative to performance parameters required by the contract.

A2.22.2 Block 18a(2) Systems Engineering. Assess the contractor's effort to transform operational needs and requirements into an integrated system design solution.

A2.22.2.1 Areas of focus should be: the planning and control of technical program tasks, the quality and adequacy of the engineering support provided throughout all phases of contract execution, the integration of the engineering specialties, management of interfaces, interoperability, and the management of a totally integrated effort of all engineering concerns to meet cost, technical performance, and schedule objectives.

A2.22.2.2 System engineering activities ensure that integration of these engineering concerns is addressed up-front and early in the design/development process. The assessment should cover these disciplines: systems architecture, design, manufacturing, integration and support, configuration control, documentation, test and evaluation.

A2.22.2.3 The assessment for test and evaluation should consider success/problems/failure in developing test and evaluation objectives; planning (ground/air/sea) test, simulations and/or demonstrations; in accomplishing those objectives and on the timeliness of coordination and feedback of the test results (simulations/demonstrations) into the design and/or manufacturing process.

A2.22.2.4 Other activities include production engineering, logistics support analysis, supportability considerations (maintenance personnel/skills availability or work hour constraints, operating, and cost constraints, allowable downtime, turnaround time to service/maintain the system, standardization requirements), survivability, human factors, reliability, quality, maintainability, availability, inspection, etc. Although some of these activities will be specifically addressed in other elements/sub-elements (such as product assurance), the focus of the assessment of systems engineering is on the integration of those specific disciplines/activities.

A2.22.2.5 The assessment of systems engineering needs to remain flexible to allow the evaluator to account for program-unique technical concerns and to allow for the changing systems engineering environment as a program moves through the program phases, e.g., Engineering and Manufacturing Development, Production.

A2.22.3 Block 18a(3) Software Engineering. Assess the contractor's success in meeting contract requirements for all applicable software engineering based activities and processes.

A2.22.3.1 Software engineering activities include, as appropriate, software development (design, code, and unit test); application of reuse, COTS, and other non-developmental software components; integration (including software component integration, system integration and test, and acceptance test support); and sustainment. Software processes include, for example: software size, effort, and schedule estimation; requirements analysis, development, and management; software configuration management; software risk identification and management; metrics collection and analysis, technical reviews, decision analysis, and software quality assurance and control, each as they specifically address software engineering activities.

A2.22.3.2 Consider the contractor's success with respect to:

1. Planning a software development, integration, and testing effort that includes compatible cost, schedule, and performance baselines
2. Delivering expected software driven capabilities on cost and on schedule
3. Effective software metrics collection/analysis and status monitoring/reporting that provide the software visibility necessary to identify timely corrective actions and appropriately execute them
4. Staffing with the software knowledge, skills, and abilities needed to execute the contract across the lifecycle; timely assignment of the appropriate numbers of software staff
5. Awareness and control of software size and stability to enable tracking and allowing growth according to vetted enhancements vice scope creep
6. Effective testing and integration of developed software within the larger system test and evaluation effort
7. Effective processes to acquire, integrate, and test commercial off-the-shelf software and to

- achieve planned software reuse
- 8. Achieving software assurance
- 9. Consistent application of documented software engineering and management processes, including technical reviews, in alignment with contract requirements

A2.22.4 Block 18a(4) Logistic Support/Sustainment. Assess the success, as appropriate, of the contractor's performance in accomplishing logistics planning. For example, maintenance planning; manpower and personnel; supply support; support equipment; technical provisioning data; training and support; computer resources support; facilities; packaging, handling, storage and transportation; design interface; the contractor's performance of logistics support analysis activities and the contractor's ability to successfully support fielded equipment. When the contract requires technical and/or engineering data deliverables, the cognizant cataloging and/or standardization activity comments should be solicited.

A2.22.5 Block 18a(5) Product Assurance. Assess how successfully the contractor meets program quality objectives; e.g., production, reliability, maintainability, inspection, testability, and system safety, and controls the overall manufacturing process. The PM must be flexible in how contractor success is measured, e.g., data from design test/operational testing successes, field reliability and maintainability and failure reports, user comments and acceptance rates, improved subcontractor and vendor quality, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall manufacturing process to include material control, shop floor planning and control, status and control, factory floor optimization, factory design, and factory performance.

A2.22.6 Block 18a(6) - Other Technical Performance. Assess all the other technical activity critical to successful contract performance. Identify any additional assessment aspects that are unique to the contract or that cannot be captured in another sub-element.

A2.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, administrative requirements, etc. Assess the contractor's adherence to the required delivery schedule by assessing the contractor's efforts during the assessment period that contribute to or affect the schedule variance. Also, address significance of scheduled events (e.g., design reviews), discuss causes, and assess the effectiveness of contractor corrective actions.

A2.24 Block 18c Cost Control. (Not Applicable for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Is the contractor experiencing cost growth or underrun, discuss the causes and contractor-proposed solutions for the cost overruns. For contracts where task or contract sizing is based upon contractor-provided person hour estimates, the relationship of these estimates to ultimate task cost should be assessed. In addition, the extent to which the contractor demonstrates a sense of cost responsibility, through the efficient use of resources, in each work effort should be assessed.

A2.24.1 Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the

UCA was in effect must be included under the Cost element. The contractor's performance under the UCA must be separately identified but considered in the overall annual ratings.

A2.25 Block 18d Management. This element is comprised of an overall rating and three sub-elements. Activity critical to successfully executing the contract must be assessed within one or more of the sub-elements. This overall rating at the element level is the AO's integrated assessment as to what most accurately depicts the contractor's performance in managing the contracted effort. It is not a roll-up of the sub-element assessments.

A2.25.1 Block 18d(1) Management Responsiveness. Assess the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals (especially responses to change orders, Engineering Change Proposals (ECPs), or Letter or Ceiling Priced Contracts), the contractor's history of reasonable and cooperative behavior, effective business relations, and customer satisfaction. Consider the contractor's responsiveness to the program as it relates to meeting contract requirements during the period covered by the report.

A2.25.2 Block 18d(2) Subcontract Management. Assess the contractor's success with timely award and management of subcontracts. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.

A2.25.3 Block 18d(3) Program Management and Other Management. Assess the extent to which the contractor discharges its responsibility for integration and coordination of all activity needed to execute the contract; identifies and applies resources required to meet schedule requirements; assigns responsibility for tasks/actions required by contract; communicates appropriate information to affected program elements in a timely manner. Assess the contractor's risk management practices, especially the ability to identify risks and formulate and implement risk mitigation plans. If applicable, identify any other areas that are unique to the contract, or that cannot be captured elsewhere under the Management element.

A2.25.3.1 Integration and coordination of activities should reflect those required by the Integrated Master Plan/Schedule. Also consider the adequacy of the contractor's mechanisms for tracking contract compliance, recording changes to planning documentation and management of cost and schedule control system, and internal controls, as well as the contractor's performance relative to management of data collection, recording, and distribution as required by the contract.

A2.26 Block 18e Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Veteran Owned Small Businesses, Service Disabled Veteran Owned Small Businesses, Historically Black Colleges and Minority Institutions, Historically Underutilized Business Zone (HUBZone) Small Businesses and ANCs and Indian Tribes that are not any of these categories) to participate in contract performance

consistent with efficient performance of the contract.

A2.26.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Where applicable, assess compliance with Small Business Subcontracting Plan (Test Program)) including any program specific data required in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A2.26.2 It may be necessary to seek input from the Small Business specialist, ACO or PCO in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted. In cases where the contractor has a comprehensive subcontracting plan, request the DCMA Comprehensive Subcontracting Plan Manager to provide input including any program specific performance information.

A2.26.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "green" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan (see AMS 3.6.1 -6). In such case, the Utilization of Small Business area must be rated "red".

A2.26.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A2.26.5 Ratings will be in accordance with definitions described in Attachment 1, "Evaluation Rating Definitions (Utilization of Small Business)."

A2.26.6 A contract may have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A2.27 Block 18f Other Areas. Specify additional evaluation areas that are unique to the contract or that cannot be captured elsewhere on the form. More than one type of entry may be included but should be separately labeled. If extra space is needed, use Block 20.

A2.27.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18f). The AO should translate the award fee earned to color ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A2.27.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type incentive contracts), it should be reported in a manner similar to

the procedures described above for award fee (by entering "Incentive" in Block 18f).

A2.27.3 Use Block 18f in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form. As an example, this block may be used to address security issues, provide an assessment of provisioning line items or other areas as appropriate.

A2.28 Block 19 Variance (Contract-to-Date). If Cost Performance Report (CPR) or Cost/Schedule Status Review (C/SSR) data are available, identify the current percent cost variance to date, the Government's estimated completion cost variance (percent), and the cumulative schedule variance (percent). Indicate the cutoff date for the CPR or C/SSR used.

A2.28.1 Compute current cost variance percentage by dividing cumulative cost variance to date (column 11 of the CPR, column 6 of the C/SSR) by the Budgeted Cost of Work Performed (BCWP) and multiply by 100.

A2.28.2 Compute completion cost variance percentage by dividing the Contract Budget Baseline (CBB) less the Government's Estimate At Completion (EAC) by CBB and multiplying by 100. The calculation is $[(CBB - EAC)/CBB] \times 100$. The CBB must be the current budget base against which the contractor is performing (including formally established Over Target Baselines (OTB)). If an OTB has been established since the last CPAR, a brief description in Block 20 of the nature and magnitude of the baseline adjustment must be provided. Subsequent CPARs must evaluate cost performance in terms of the revised baseline and reference the CPAR that described the baseline adjustment. For example, "The contract baseline was formally adjusted on (date); see CPAR for (period covered by report) for an explanation."

A2.28.3 Compute cumulative schedule variance percentage by dividing the Budgeted Cost of Work Performed (BCWP) less budgeted cost of work scheduled (BCWS) by BCWS and multiply by 100. The calculation is $[(BCWP - BCWS)/BCWS] \times 100$. If the schedule variance exceeds 15 percent (positive or negative), briefly discuss in Block 20 the significance of this variance for the contract effort.

A2.29 Block 20 AO Narrative (see Paragraph 1.4). A factual narrative is required for all assessments regardless of color rating (e.g., even "green" or "satisfactory" ratings require narrative support). Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18 or 19. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal engineering design/support assessment could, for example, be supported by information concerning personnel changes. Key engineers familiar with the effort may have been replaced by less experienced engineers. Sources of data include operational test and evaluation results; technical interchange meetings; production readiness reviews; earned contract incentives; or award fee evaluations. The AO's comments in Block 20 may be up to 16,000 characters (approximately three pages) in CPARS.

A2.29.1 The AO must choose the applicable choice to the following statement after block 20: "Given what I know today about the contractor's ability to execute what they promised in their proposal, I (would , would not) award to them today given that I had a choice."

A2.30 Block 21 AO Signature. The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A2.31 Block 22 Contractor Comments. Completed at the option of the contractor. The contractor's narrative comments may be up to 16,000 characters (approximately three pages).

A2.32 Block 23 Contractor Representative Signature. The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A2.33 Block 24 RO Comments. The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO's narrative comments may be up to 16,000 characters (approximately three pages).

A2.34 Block 25 - RO Signature. The RO will enter his or her name, title, organization (AF users do not include a code), phone number in the following format: (XXX) XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 3 Instructions for Completing a Services, Information Technology, or Operations Support CPAR

A3.1 All business sectors, except Systems, and construction and architect-engineer, will be completed on this form.

A3.2 Block 1 Name/Address of Contractor. State the name and address of the division or subsidiary of the contractor that is performing the contract. Identify the parent corporation (no address required). Identify the CAGE code, DUNS+4 number, Federal Supply Classification (FSC) or Service Code, and North American Industrial Classification System (NAICS) code. All codes can be accessed by using the on-screen "lookup" function provided in the electronic form.

A3.3 Block 2 Type Report. Indicate whether the CPAR is an initial, intermediate, or final report. If this is an "out-of-cycle" report, select "out-of-cycle." If this is a report to record contractor performance relative to contract closeout or other administrative requirements, select "Addendum."

A3.4 Block 3 Period of Performance Being Assessed. State the period of performance covered by the report (dates must be in MM/DD/YYYY format). The initial period of performance should not cover less than six months of actual performance.

A3.4.1 Period of Performance for Delayed Starts, Protests or Phase-In Periods. In the case of delayed starts or protests, the initial period of performance may cover more than twelve months of time since contract award, but normally no more than twelve months of actual contract performance. Initial periods reporting on performance greater than 12 months (such as for phase-in periods) must be approved by the CPAR Focal Point and coordinated with the contractor. The period of performance

should not already include reported efforts except when an out-of-cycle CPAR has been processed.

A3.4.2 Period of Performance for Intermediate/Final Reports. CPAR assessments for intermediate and final reports should cover a 12 month period of performance. Exceptions to this rule for special circumstances, such as a period of performance that ends one month before contract completion or in those instances (up to six months beyond the annual period) where the performance has been extended must be approved by the CPAR Focal Point.

A3.4.3 Period of Performance for Out-of-Cycle Reports. Select “Out-of-Cycle” from the drop-down menu if the AO elects to prepare an out-of-cycle report which will be posted to the CPARS AIS for a time period which overlaps the regularly scheduled performance period if there has been a significant change in the performance which alters the assessment in one or more evaluation area(s) since the last performance period. If the AO chooses to have the Out-of- Cycle report posted in the CPARS AIS, the CPAR will be processed through the regular work flow (Government and contractor review). See Paragraph 4.4 for more information on Out-of-Cycle reports.

A3.5 Block 4a Contract Number. Use the contract number as identified on the contract, except in the case of BOAs, BPAs, GSA schedule and other agency orders. If an order/call is issued under a BOA, BPA, GSA schedule or other agency contract/agreement, the contract number in CPARS should match the master contract number. The order number field should be used to reflect the contract/schedule/agreement number for the order/call.

A3.6 Block 4b Business Sector and Sub-Sector. Service/IT/Operations

A3.7 Block 5 Contracting Office (Organization and Code). Identify the contracting office symbol.

A3.8 Block 6 - Location of Contract Performance. Provide a geographical reference (e.g., nearest city and installation name) if performance is on a military installation.

A3.9 Block 7a Contracting Officer. Self-explanatory.

A3.9.1 Block 7b Phone Number. Include the commercial phone number in the following format: (XXX) XXX-XXXX

A3.10 Block 8a Contract Award Date. Identify the date of contract award or select the date on the on-screen, drop-down calendar.

A3.10.1 Block 8b Contract Effective Date. Identify the date (MM/DD/YYYY) that actual contract performance is set to begin or select the on-screen calendar date only if that date is later than Block 8a, Contract Award Date.

A3.11 Block 9 Contract Completion Date. Identify the last possible date of contract performance (e.g., the last calendar day of the last option period) or select the date on the on- screen, drop-down calendar.

A3.12 Block 10 N/A. Not applicable.

A3.13 Block 11 Awarded Value. Enter the total value of the contract, including unexercised options. For delivery/task/job order contracts where orders will be assessed under a single CPAR, enter the maximum ordering amount under the contract, including options. For delivery/task/job order contracts where orders will be assessed on an individual basis, enter the awarded value of the individual order. For BOAs/BPAs where orders/calls will be assessed individually, enter the awarded value of the individual order.

A3.14 Block 12 Current Contract Dollar Value. State the current obligated amount including modifications and options that have been exercised. For incentive contracts, state the target price or total estimated amount. For delivery/task/job order contracts where orders will be assessed under a single CPAR, state the total amount obligated on all delivery orders, including modifications. For delivery/task/job order contracts where orders will be assessed on an individual basis, state the current obligated amount of the individual order, including modifications. For BOAs where orders will be assessed individually, state the current obligated amount of the individual order, including modifications.

A3.15 Block 13 Basis of Award. Identify the basis of award by selecting competitive or non-competitive. If the CPAR is for a single order/call, select the basis of award for that order/call.

A3.16 Block 14 Contract Type. Identify the contract type. For mixed contract types, select the predominant contract type and identify the other contract type in the "mixed" block.

A3.17 Block 15 Key Subcontractors and Description of Effort Performed. Identify subcontractors, including CAGE code and DUNS +4 number, performing either a critical aspect of the contracted effort or more than 25 percent of the dollar value of the effort. If possible, include the amount of subcontract costs of the total contract effort. Discussion of the prime contractor's management of the subcontractor should be included in Block 18d-Business Relations.

A3.18 Block 16 Program Title and Phase of Acquisition. Provide a descriptive narrative of the program. Spell out all abbreviations and acronyms. Identify the type of services (for example, professional services, maintenance, installation or information technology services).

A3.19 Block 17 Contract Effort Description. Provide a description of the contract effort that identifies the key requirements and/or type of effort. This section is of critical importance to future source selection officials. The description should be detailed enough so that it can be used in determining the relevance of this program to future source selections. It is important to address the complexity of the contract effort and the overall technical risk associated with accomplishing the effort. Ensure acronyms are identified. For task/delivery order contracts, state the number of orders issued during the period.

A3.20 Small Business Utilization. Answer the following questions:

1. Does this contract include a subcontracting plan?
2. Is small business subcontracting under this contract included in a comprehensive small business subcontracting plan?

3. Is small business subcontracting under this contract included in a commercial small business subcontracting plan?
4. Date of last Individual Subcontracting Report (ISR) /Summary Subcontracting Report (SSR)

A3.21 Block 18 Evaluation Areas. Evaluate each area based on the following criteria:

A3.21.1 Each area assessment must be supported by objective data (or subjective observations) that will be provided in Block 20. Facts to support specific areas of evaluation must be requested from the PM, Contracting Officer and other specialists familiar with the contractor's performance on the contract under review. Such specialists may, for example include the Contracting Officer's Representative (COR) for the program and may also be from engineering, manufacturing, quality, logistics (including provisioning), contracting, maintenance, security, data, etc.

A3.21.2 The amount of risk inherent in the effort should be recognized as a significant factor and taken into account when assessing the contractor's performance. When a contractor identifies significant technical risk and takes action to abate those risks, the effectiveness of these actions should be included in the narrative supporting the Block 18 ratings.

A3.21.3 The CPAR is designed to assess prime contractor performance. In those evaluation areas where subcontractor actions have significantly influenced the prime contractor's performance in a negative or positive way, record the subcontractor actions in Block 20.

A3.21.4 Evaluate all areas which pertain to the contract under evaluation, unless they are not applicable ("N/A").

A3.21.5 When performance has changed from one period to another such that a change in ratings results, the narrative in Block 20 must address each change.

A3.21.6 The AO should use customary industry quantitative measures where they are applicable if the contract is for commercial products.

A3.21.7 Ratings will be in accordance with the definitions in Attachment 2.

A3.21.8. A fundamental principle of assigning ratings is that contractors will not be assessed a rating lower than satisfactory solely for not performing beyond the requirements of the contract.

A3.22 Block 18a Quality of Product or Service. Assess the contractor's conformance to contract requirements, specifications and standards of good workmanship (e.g., commonly accepted technical, professional, environmental, or safety and health standards). List and assess any sub-elements to indicate different efforts where appropriate. Include, as applicable, information on the following:

1. Are the reports data accurate?
2. Does the product or service provided meet the specifications of the contract?
3. Does the contractor's work measure up to commonly accepted technical or professional standards?

4. What degree of FAA technical direction was required to solve problems that arise during performance?

For Operations Support: Assess how successfully the contractor meets program quality objectives such as production, reliability, maintainability and inspection. The AO must be flexible in how contractor success is measured; e.g., using data from field reliability and maintainability and failure reports, user comments and acceptance rates, and scrap and rework rates. These quantitative indicators may be useful later, for example, in source selection evaluations, in demonstrating continuous improvement, quality and reliability leadership that reflects progress in total quality management. Assess the contractor's control of the overall production process to include material control, shop planning and control, and providing status updates.

A3.23 Block 18b Schedule. Assess the timeliness of the contractor against the completion of the contract, task orders, milestones, delivery schedules, and administrative requirements (e.g., efforts that contribute to or affect the schedule variance).

This assessment of the contractor's adherence to the required delivery schedule should include the contractor's efforts during the assessment period that contributes to or affect the schedule variance. This element applies to contract closeout activities as well as contract performance. Instances of adverse actions such as the assessment of liquidated damages or issuance of Cure Notices, Show Cause Notices, and any other notifications to the contractor of serious contract performance issues are indicators of problems which may have resulted in variance to the contract schedule and should, therefore, be noted in the evaluation.

A3.24 Block 18c Cost Control. (Not required for Firm-Fixed Price or Firm-Fixed Price with Economic Price Adjustment). Assess the contractor's effectiveness in forecasting, managing, and controlling contract cost. Include, as applicable, the following information:

1. Does the contractor keep within the total estimated cost (what is the relationship of the negotiated costs and budgeted costs to actuals)?
2. Did the contractor do anything innovative that resulted in cost savings?
3. Were billings current, accurate and complete?
4. Are the contractor's budgetary internal controls adequate?

Assessment information regarding performance under a UCA must be included in the annual evaluation. If the final negotiated contract type is not a cost-type, cost information for the period the UCA was in effect must be included under the cost element. The contractor's performance under the UCA will be separately identified but considered in the overall annual ratings.

A3.25 Block 18d Business Relations. Assess the integration and coordination of all activity needed to execute the contract, specifically the timeliness, completeness and quality of problem identification, corrective action plans, proposal submittals, the contractor's history of reasonable and cooperative behavior (to include timely identification of issues in controversy), customer satisfaction, timely award and management of subcontracts. Include, as applicable, information on the following:

1. Is the contractor oriented toward the customer?

2. Is interaction between the contractor and the government satisfactory or does it need improvement?
3. Include the adequacy of the contractor's accounting, billing, and estimating systems and the contractor's management of Government Property (GFP) if a substantial amount of GFP has been provided to the contractor under the contract.
4. Address the timeliness of awards to subcontractors and management of subcontractors, including subcontract costs. Consider efforts taken to ensure early identification of subcontract problems and the timely application of corporate resources to preclude subcontract problems from impacting overall prime contractor performance.
5. Assess the prime contractor's effort devoted to managing subcontracts and whether subcontractors were an integral part of the contractor's team.

A3.26 Block 18e Management of Key Personnel (For Services and Information Technology Business Sectors only - Not Applicable to Operations Support). Assess the contractor's performance in selecting, retaining, supporting, and replacing, when necessary, key personnel. For example:

1. How well did the contractor match the qualifications of the key position, as described in the contract, with the person who filled the key position?
2. Did the contractor support key personnel so they were able to work effectively?
3. If a key person did not perform well, what action was taken by the contractor to correct this?
4. If a replacement of a key person was necessary, did the replacement meet or exceed the qualifications of the position as described in the contract schedule?

A3.27 Block 18f Utilization of Small Business. FAA AMS T3.6.1 and Clause 3.6.1-4 contain requirements for complying with the Small Business Subcontracting Program. Assess whether the contractor provided maximum practicable opportunity for Small Business (including Alaska Native Corporations (ANCs) and Indian Tribes) (including Small Disadvantaged Businesses (which also includes ANCs and Indian Tribes), Women Owned Small Businesses, Service Disabled Veteran Owned Small Business, Historically Black Colleges and Universities and Minority Educational Institutions and ANCs and Indian Tribes that are not Small Disadvantaged Businesses or Small Businesses) to participate in contract performance consistent with efficient performance of the contract.

A3.27.1 Assess compliance with all terms and conditions in the contract relating to Small Business participation. Assess any small business participation goals which are stated separately in the contract. Assess achievement on each individual goal stated within the contract or subcontracting plan including good faith effort if the goal was not achieved.

A3.27.2 It may be necessary to seek input from the Small Business Office or Contracting Officer in regards to the contractor's compliance with these criteria, especially when a comprehensive plan is submitted

A3.27.3 For contracts subject to a commercial subcontracting plan, the Utilization of Small Business factor should be rated "satisfactory" as long as an approved plan remains in place, unless liquidated damages have been assessed by the Contracting Officer who approved the commercial plan. In such

case, the Utilization of Small Business area must be rated “unsatisfactory”.

A3.27.4 This area must be rated for all contracts and task orders that contain a small business subcontracting goal.

A3.27.5 Ratings will be in accordance with definitions described in Attachment 2, "Evaluation Ratings Definitions (Utilization of Small Business)."

A3.27.6 A contract must have no more than one subcontracting plan. Evaluations of the utilization of small business are required for contracts and orders placed against basic ordering agreement (BOA) and blanket purchase agreement (BPA) if a subcontracting plan is required. Evaluations of utilization of small business for single-agency task orders and delivery orders (to include FSS) are not required and will not be accomplished unless the Contracting Officer determines that such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation. Execution of any subcontracting plan may be addressed in block 20.

A3.28 **Block 18g Other Areas.** Specify additional evaluation areas that are unique to the contract, or that cannot be captured elsewhere on the form. More than one type of entry may be included, but should be separately labeled. If extra space is needed, use Block 20.

A3.28.1 If the contract contains an award fee clause, enter "award fee" in the "Other Areas" Block (18g). The AO should translate the award fee earned to adjectival ratings which could prove more useful for using past performance to assess future performance risk in upcoming source selections. If award fee information is included in the CPAR, use Block 20 to provide a description for each award fee. Include the scope of the award fee by describing the extent to which it covers the total range of contract performance activities, or is restricted to certain elements of the contract.

A3.28.2 If any other type of contract incentive is included in the contract (excluding contract share incentives on fixed price or cost-type contracts), it should be reported in a manner similar to the procedures described above for award fee (by entering "Incentive" in Block 18g).

A3.28.3 Use Block 18g in those instances where an aspect of the contractor's performance does not fit into any of the other blocks on the form.

A3.29 **Block 19 N/A.** Not applicable.

A3.30 **Block 20 Assessing Official Narrative (see Paragraph 1.4).** A factual narrative is required for all assessments regardless of rating. Cross-reference the comments in Block 20 to their corresponding evaluation area in Block 18. Each narrative statement in support of the area assessment must contain objective data. An exceptional cost performance assessment could, for example, cite the current underrun dollar value and estimate at completion. A marginal assessment could, for example, be supported by information concerning personnel changes or schedule delinquency rate. Key personnel familiar with the effort may have been replaced by less experienced personnel. Sources of the data used by the AO for the assessment may include customer/field surveys or evaluation of contractor reports. The Contracting Officer should be contacted to ensure that all applicable data has been incorporated. Block 20 comments may be up to 16,000 characters (approximately three pages) in

CPARS.

A3.30.1 The AO must choose the applicable choice to the following statement after Block 20: “Given what I know today about the contractor’s ability to execute what they promised in their proposal, I (would, would not) award to them today given that I had a choice.”

A3.31 **Block 21 AO Signature.** The AO enters his or her name, title, and organization, phone number (in the following format: (XXX)XXX-XXXX), email address, FAX number, and signs and dates the form prior to making it available to the contractor for review.

A3.32 **Block 22 Contractor Comments.** Completed at the option of the contractor. The contractor’s narrative comments may be up to 16,000 characters (approximately three pages).

A3.33 **Block 23 Contractor Representative Signature.** The contractor representative reviewing/commenting on the CPAR will enter his or her name, title, phone number, email address, FAX number, and signs and dates the form prior to returning it to the AO.

A3.34 **Block 24 RO Comments.** The RO must acknowledge consideration of any significant discrepancies between the AO assessment and the contractor's comments. The RO’s narrative comments may be up to 16,000 characters (approximately three pages).

A3.35 **Block 25 - RO Signature.** The RO will enter his or her name, title, organization, phone number in the following format: (XXX)XXX-XXXX, email address, FAX number, and date when completing the CPAR.

Attachment 4 CPARS Website Features

Features of the CPARS website include:

1. The “production” CPAR system for actual entry of the performance evaluation data;
2. The “practice” CPAR system. The practice system is a mirror image of the functionality of the CPAR system using a separate database of simulated CPAR records. The practice system allows users to gain familiarity with the system without actually entering live performance evaluation data;
3. A “requirements” page that describes hardware and software required, security access levels, security features, how to obtain a user account and technical service support, and answers to frequently asked questions.
4. Instructions on Internet Explorer (IE) fixes that may be necessary for FAA access to CPARS;
5. A Quality Checklist that tutors users on completing a quality evaluation;
6. Link to reference material;
7. Link to CPARS Training;
8. Access Request forms;
9. Software Release history; and
10. Metrics (updated quarterly).

Section Revised: T3.10.3 – Government Property

Procurement Guidance - (~~7/2021~~9/2021)

T3.10.3 Government Property Revised 10/2009

A Government Property

1 Applicability Revised 10/2018

2 Responsibilities Revised ~~10/2018~~9/2021

3 Audit of Property Management System Revised 10/2018

4 Official FAA Property Records Revised 10/2018

5 Federal Electronic Assets (FEA) Revised 10/2018

6 Sale of Surplus Contractor Inventory Revised 10/2018

7 Exemptions from Sale by GSA Revised 10/2018

8 Disposition of Wireless Devices Revised 10/2018

B Clauses

~~C Forms~~

~~D Appendix~~

~~1 Appendix – Sample Delegation Memo~~ Revised 10/2018

~~2 Appendix – Sample Designation Letter~~ Revised 10/2018

C Procurement Forms Revised 9/2021

D Procurement Samples Revised 9/2021

E Procurement Templates Added 9/2021

F Procurement Tools and Resources Added 9/2021

T3.10.3 Government Property Revised 10/2009

A Government Property

1 Applicability Revised 10/2018

This guidance applies to all FAA Screening Information Requests (SIR) and contracts that provide Government property to contractors, and establishes policies for contractors' use and management of Government property, reporting, redistributing, and disposing of contractor inventory.

Contractors are ordinarily responsible for furnishing all property necessary to perform FAA contracts. However, when authorized the FAA may provide various types of property to contractors.

2 Responsibilities Revised 10/20189/2021

a. Contracting Officer.

(1) Pre-award. The Contracting Officer (CO) coordinates with the Property Administration Office regarding Government property before issuing a SIR, to ensure that contracts contain the appropriate Government property provisions.

(2) Terms and Conditions. The CO should assure that the terms and conditions of the contract clearly address the contractor's obligations regarding the Government property.

(3) Prior Approval. The CO is the only person with the authority to approve a contractor's use of Government property. The CO should include the property description and the terms and conditions for contractor possession of Government property in the contract.

(4) Property Administration Delegation. Property Administration is the responsibility of the CO when Government property is authorized on a FAA contract. In accordance with AMS policy, the CO must delegate property administration authority to the property administration office. (A ~~sample~~template memo is in ~~Appendix 1~~Procurement Templates.) The property administration office will identify a specialist to serve as Property Administrator (PA) to administer the Government property requirements under the contract. The delegation should clearly delineate the authority of the PA. The CO should provide a copy of the contract and modifications that affect Government property to the delegated PA. The CO should also provide the contractor a copy of the letter of PA delegation. (A ~~sample~~template letter is in ~~Appendix 2~~.)Procurement Templates).

b. Property Administration Office

(1) Provides pre-award Government property support and guidance.

- (2) Administers contract provisions, requirements, and obligations, relating to government property in the possession of contractors.
- (3) Participates in pre-award surveys and post award reviews.
- (4) Evaluates the contractors' property management system, approving the system or recommending disapproval where systems create an unacceptable risk of loss, misuse, damage or destruction of property.
- (5) Reviews contracts assigned for property administration to assure that property is identified in the contract.
- (6) Provides guidance, counsel, and direction relative to government property administration.
- (7) Monitors compliance with regulations and contract requirements pertaining to FAA's GFP.
- (8) Develops and applies a property systems analysis program to assess the effectiveness of the contractors' government property management system. Establishes a property administration plan that provides for surveys of the contractors' system and integrates this plan into the entire property administration program.
- (9) Reviews documentation required by the contract and takes appropriate action to protect the Government's interest.
- (10) Renders liability determinations for loss, damage, and destruction of property on the basis of contract terms and conditions.
- (11) Verifies submission of annual financial reports from contractors and provides reconciliation support to the program office.
- (12) Ensures that the contractor promptly reports excess Government property for disposition in accordance with contract provisions and provides disposition instructions for unrequired property. Also, serves as plant clearance officer when appropriate.
- (13) Enters excess property into GSA's Xcess database at <https://gsaaxcess.gov/> for screening. Uploads photographs or digital images of excess property if available and at no cost to the Government.
- (14) Ensures final accounting of all Government property, and certifies completion of disposal actions and resolutions of lost, damage, or destroyed property issues.

c. FAA Program Office/Custodial Office.

- (1) Identifies and makes available required Government property.
- (2) Initiates, processes and maintains source documents, which authorize the furnishing or acquisition of Government property in accordance with contract requirements.
- (3) Performs inventory verification to assure that Government property is physically, quantitatively, and technically allocable to the contract.
- (4) Validates the contractor's annual financial property reports.
- (5) Prepares and distributes FAA Form 4650-12 at <https://employees.faa.gov/documentLibrary/media/form/faa4650-12.pdf> for the transfer, return, or shipment in place of Government property.

d. *Contractor.*

- (1) The contractor should make property requirements known to the CO in the early stages of project preparation and as required to continue contract performance. A categorized equipment requirements list should be included with the project proposal.
- (2) The contractor must have a written property control system that fulfills contract requirements for the management of Government property.
- (3) The contractor has the primary responsibility for exercising reasonable care and control of Government property in its possession and for maintaining property records in accordance with the FAA's instructions. Government property must only be used for the purpose set forth in the contract. The contractor is accountable for all Government property furnished until relieved of that responsibility in accordance with the terms of the contract. Responsibility for reasonable care and control of Government property provided under the contract and in the possession of a subcontractor remains with the prime contractor until the CO or PA rescinds it.
- (4) The contractor must comply with all provisions of the property clauses as provided for in the contract.
- (5) All Government property obtained by the contractor through contract must be properly marked with Government tags.
- (6) The contractor must structure property controls within framework of the property management system so that lost, stolen, or damaged property as well as excess property is immediately identified and reported.
- (7) The contractor must provide receipts for all Government-Furnished Property on a FAA Form 4650-12.

3 Audit of Property Management System Revised 10/2018

The PA may audit the contractor's property management system in order to verify property management processes as frequently as conditions warrant. These audits may take place any time during contract performance, upon contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor must make all such records and related correspondence available to the auditors.

4 Official FAA Property Records Revised 10/2018

The Government property files, whether maintained by the contracts office or the PA, as a minimum, should consist of the following:

1. A copy of the applicable portions of the contract that list the Government- furnished property (GFP);
2. Contracting Officer's letters delegating the PA to the contract;
3. Written evidence that the contractor's property management system was reviewed and approved as required;
4. Record of property system analyses performed, deficiencies disclosed, and corrective actions taken;
5. A copy of the contractor's annual financial and inventory reports of Government property.
6. Copies of liability determinations for any lost, damaged, or destroyed property;
7. Copies of property disposal actions, including determinations, screening, authorization and documentation of completion.

5 Federal Electronic Assets (FEAs) Revised 10/2018

- a. Federal Electronic Assets (FEAs) are items such as copiers; telephones, fax machines and communication equipment; and desktop and laptop/portable computers, computer monitors , displays, printers, peripherals and electronic components. For other examples, see GSA Bulletin FMR B-34 dated February 29, 2012.
- b. Disposal Requirements – the following must be considered in disposing of FEAs under FAA contracts:
 - (1) First, use every opportunity to reuse functional FEAs in condition codes 1, 4, and 7 (refer to Federal Management Regulation (FMR) § 102-36.240 and the attached disposal condition code descriptions) through the Federal disposal program, including (in sequence):
 - (a) Reuse within the FAA, including replacement through exchange or sale under the exchange/sale authority (FMR Part 102-39);
 - (b) Transfers to other Federal agencies requesting the FEAs (FMR Part 102-36); or transfers to schools and educational organizations under E.O. 12999, Educational Technology: Ensuring

Opportunity for All Children in the Next Century, and the Stevenson-Wydler Technology Innovation Act (15 U.S.C. § 3701);

(c) Donations (through GSA) to states and eligible nonprofit organizations;

(d) Sales to the public (FMR Part 102-38). FEAs sold to the public under this subparagraph would normally be in condition codes 1, 4, or 7 where any needed repairs minimally impact asset performance or repairs can reasonably be performed by a non-technical buyer (such as assets with cosmetic damage, missing keyboard characters, or missing plug-in components). If it is decided that FEAs in condition code 7 may be sold (rather than abandoned or destroyed in accordance with subparagraph 6.A.(2) of FMR B-34, herein), such FEAs should be sold only as individual assets or as individual workstations to facilitate bidder inspection in the interest of encouraging continued use of the FEAs after the sale; or

(e) Under the FAA's abandonment/destruction authority (FMR § 102-36.305, et seq.), return FEAs to a manufacturer or vendor under a take-back program that uses a certified recycler. See subparagraph 6.A. (3) of FMR B-34 for information on which recyclers are certified.

(2) Direct FEAs disposed of under the FAA's abandonment/destruction authority to authorized certified recyclers or refurbishers through -

(a) Manufacturer or vendor take-back programs that use certified recyclers or refurbishers; or

(b) Disposal contracts or agreements with certified recyclers or refurbishers.

(3) GSA will periodically review certification programs in collaboration with its stakeholders to determine which programs meet the needs of the Federal Government. In the interim, the only certification programs currently recognized for disposal of FEAs are the Responsible Recycling (R2) program and the e-Stewards program.

(4) Each recipient of usable FEAs should be guided towards preferred disposal methods. The following statement should be used in documentation transferring ownership or custody of FEAs, and the statement should also be apparent in any listing or advertisement of the FEA planned for disposal under any option listed in subparagraph 6.A.(1) of FMR B-34:

"The Federal Government has determined that improper disposal of used electronics may have potentially harmful effects on human health and the environment. This/these electronic product(s) must be disposed of at their end of useful life in accordance with all Federal, state, and local laws. The Federal Government strongly encourages recycling these products through certified recyclers, even when such recycling is not required by Federal, state or local laws. Information regarding certified recyclers is available at <https://www.epa.gov/fec/recycling-federal-electronic-equipment-6112013>."

(5) Following existing FAA policies to clean hard drives and other storage devices in order to protect sensitive data and maximize reuse potential by using the least destructive sanitization procedures wherever appropriate.

(6) FEAs should not be disposed of in landfill or incinerators.

(7) FEAs located overseas and designated as foreign excess must follow FMR § 102-36.390.

However, any abandonment/destruction action should give preference to disposition through a certified recycler, when permissible under relevant foreign laws and regulations. All disposal actions for foreign excess must comply with the laws and environmental regulations of the host country.

6 Sale of Surplus Contractor Inventory Revised 10/2018

- a. The Administrator, GSA, exercises general supervision and direction over the disposition of surplus personal property, including sales of surplus contractor inventory. Policy and procedures for sales of contractor inventory are contained in the Federal Property Management Regulations (FPMR) 41 CFR Part 101-10.
- b. Reportable property submitted to GSA via GSA's Xcess for utilization screening and not otherwise transferred or donated will automatically be programmed for sale by the GSA regional office.

7 Exemptions from Sale by GSA Revised 10/2018

- a. Many FAA NAS systems and equipment are unique and if used outside the NAS may endanger the integrity/security of the NAS. Under the provisions of Title 49, USC, section 401 10(c) (4) (Special NAS Disposal), the FAA is exempt from the provisions of the Federal Management Regulations (FMR) and Federal Property Management Regulation (FPMR) regarding the disposition of the airport and airway property and technical equipment used for special purposes of the FAA (i.e., technical equipment with the capacity to transmit across NAS-controlled airway frequencies.) This means NAS equipment that has the capability to transmit, navigate, or provide surveillance across the NAS airwaves does not have to be reported as excess to GSA under FMR 102-36 and may be immediately disposed of via an R2 or e-Stewards certified recycling programs. The Director of the FAA Aviation Property Management organization or their designee implements this authority.
- b. For disposal of items not covered by paragraph 7a, agency heads may seek exemptions from the Administrator, GSA, by submitting a letter explaining the impairment or adverse effect of sale by GSA and justifying the need for the exemption.
- c. GSA regional offices may authorize sale by the reporting activity of perishable items or small lots of limited-value property at isolated locations.
- d. Proceeds of sale. Except for sales conducted under the authority of the FAA Administrator, proceeds of any sale are to be credited to the Treasury of the United States as miscellaneous receipts, except where the contract or any subcontract thereunder authorizes the proceeds to be credited to the price or cost of the work (40 U.S.C. 485(a) and (e)).
- e. Contractor inventory in foreign countries. Contractor inventory located in foreign countries should be sold or disposed of in accordance with agency procedures (see 40 U.S.C. 511-514).

8 Disposition of Wireless Devices Revised 10/2018

- a. For disposal of wireless devices under FAA contracts, including pagers, cellular handsets, PDAs, phones, Blackberries, cellular iPads/iPhones, Air Cards, and MIFIs are prohibited from being reported as excess in AITS. Devices must be transferred to the National Wireless Program (NWP) for disposal/recycling.

- b. Report unrequired wireless devices to the NWP Help Desk via Email at 9-Natl-Wireless-Program@faa.gov or call (405) 954-5408 so the NWP can provide you with instruction to transfer the device to the NWP Program Office.

B Clauses

[view contract clauses](#)

C Procurement Forms

[view procurement forms](#)

~~D Appendix~~

~~1 Appendix – Sample Delegation Memo~~ Revised 9/2021

~~Appendix 1 – Sample Delegation Memo (Added 07/2004)~~

~~The basic text for a Property Administrator delegation memo is:~~

~~ACTION: Delegation of Property Administrator for~~

~~Contract 693KA8-XX-C-XXXXX~~

~~Contracting Officer, (Insert Appropriate FAA Office Designator)~~

~~(Insert Appropriate Office Address)~~

~~The subject contract specifies that Government owned property is authorized. **John Doe** is the Technical Officer for this contract and can be reached at 202-123-4567.~~

~~Please assign a Property Administrator to be responsible for all property administration functions associated with this contract and have him or her acknowledge acceptance of this delegation by signing and returning a copy of this memorandum. A copy of the memorandum will be retained in the contract file.~~

~~A copy of the contract and related modifications are attached.~~

~~John Doe Contracting Officer ENDORSEMENT~~

~~Delegation of Property Administration responsibilities is accepted and has been assigned to:~~

~~_____~~

Signature: _____

Date: _____

2 Appendix – Sample Designation Letter

Document Name

D Procurement Samples Revised 9/2021

~~Appendix 2 – Sample Designation Letter (Added 07/2004)~~

~~The basic text for a Property Administrator designation letter is: Dear~~

~~(company official):~~

~~The subject contract specifies that Government Furnished Property (GFP) and/or Contractor Acquired Property (CAP) will be provided. Therefore, as Contracting Officer I have delegated **John Doe** as the FAA Property Administrator (PA).~~

~~The PA shall be responsible for all property administration functions. The PA has no authority to issue directions or enter into agreements that may constitute assignment of new work or change the expressed terms, conditions, or specifications in the contract.~~

~~You are cautioned against accepting oral or written instructions on property matters from sources other than the Contracting Officer or from the Property Administrator.~~

~~Please forward the name and telephone number of the property administrator responsible for Government Property Management and a copy of your Property Control Management System (PCS) to **John Doe** for review and approval.~~

~~Direct all correspondence and inquiries regarding property to (Insert Appropriate Office Address) Attention: **John Doe**.~~

~~At the time of issuance, you will forward to the undersigned a copy of all correspondence you direct to the Property Administrator.~~

Sincerely, Jane Doe

Contracting Officer

<u>Document Name</u>

E Procurement Templates Added 9/2021

<u>Document Name</u>
<u>Property Administration Designation Letter</u>
<u>Property Administrator Delegation Memo</u>

F Procurement Tools and Resources Added 9/2021

<u>Document Name</u>

Section Revised: T3.10.4 – Quality Assurance

Procurement Guidance - (~~7/2021~~9/2021)

T3.10.4 Quality Assurance Revised 7/2007

A Quality Assurance

1 Objectives Revised 4/2020

2 Responsibilities Revised ~~7/2017~~9/2021

3 Levels of Quality Requirements and Standards Revised 4/2020

4 Acceptance Revised 7/2007

5 Warranties Revised 7/2007

6 Government-Industry Data Exchange Program Revised 7/2007

7 Considerations for Use of Clauses Revised 7/2007

8 Construction Nonconforming Parts Revised 7/2007

B Clauses Revised 7/2007

C Procurement Forms Revised 9/2021

~~D Appendix~~ Revised 7/2007

~~D Procurement Samples~~ Revised 9/2021

~~E Procurement Templates~~ Added 9/2021

~~F Procurement Tools and Resources~~ Added 9/2021

T3.10.4 Quality Assurance Revised 7/2007

A Quality Assurance

1 Objectives Revised 4/2020

The quality assurance objectives related to the National Airspace System (NAS) acquisitions for systems, equipment, material, and services are:

- a. ~~a.~~ To establish appropriate quality assurance program requirements for use in the acquisition process.
- b. ~~b.~~ To require and obtain delivery of systems, equipment, material, and services that conform to established technical requirements.
- c. ~~c.~~ To utilize AS9100 series standards on acquisitions when a higher-level quality standard has been identified. Third-Party Registration of an offeror's/contractor's quality system is not required.
- d. ~~d.~~ To eliminate the potential safety risk posed by ~~nonconforming~~ non-conforming parts in NAS construction. Included in the category of nonconforming parts are suspected unapproved parts (SUP).

2 Responsibilities Revised 7/20179/2021

- a. ~~a.~~ *Product or Service Team.* The product or service team should coordinate with the Acquisition Quality Assurance Group (AAQ--100) and ~~should~~ include quality assurance provisions in procurement planning documents, screening information requests (SIR), specifications, engineering requirements, purchase descriptions, work statements, work orders, and procurement requests necessary to meet the quality assurance objectives set forth above. The product or service team should ensure that appropriate criteria are developed for evaluating the quality assurance plans included in prospective contractors' proposals.
- b. ~~b.~~ *Office of Acquisition and Contracting.* The Office of Acquisition and Contracting implements agency policy, standards, and procedures for the quality assurance programs involved in NAS acquisitions for systems, equipment, material, and services. In addition, the Office provide guidance, oversight, and support to regions, service centers, and centers for implementing quality assurance programs to ensure compliance with the quality assurance policy.
- c. ~~c.~~ *Quality Reliability Officer (QRO).* The QRO has the responsibility to provide on-site support at the contractor's facility under the authority delegated by the Contracting Officer. The QRO ensures ~~that~~ the contractor's quality system satisfies the contract quality assurance requirements, and is authorized to accept or reject systems, equipment, and material in accordance with the contract requirements.

d. ~~d.~~ *Contracting Officer (CO)*. Before issuing the SIR, the CO ensures appropriate QA provisions are included in the documentation. The CO coordinates with the Acquisition Quality Assurance Group regarding appropriate QA provisions. After contract award, the CO forwards copies of the contract to the Acquisition Quality Assurance Group. The draft ~~letter of QRO designation~~ Designation Letter to the contractor is forwarded by the Quality Assurance Group to the CO for signature. ~~A sample letter~~ A template of the QRO Designation Letter and QRO Delegation Letter is located in ~~Appendix~~ Procurement Templates.

(1) ~~(1)~~ The CO should coordinate with the Acquisition Quality Assurance Group before issuing new SIRs or other draft SIRs outside of the FAA to ensure that contracts contain appropriate quality assurance provisions.

(2) ~~(2)~~ Once the contract is executed, the CO ensures the contractor delivers the systems, equipment, material, and services in accordance with all quality provisions of the contract.

e. ~~e.~~ *Regions, Service Areas, and Centers*. The regions, service areas, and centers should include appropriate requirements for quality assurance programs in their NAS acquisitions for systems, equipment, material, and services.

3 Levels of Quality Requirements and Standards Revised 4/2020

The quality standard or requirements to be used on FAA procurements is dependent on several factors such as criticality, complexity, and dollar value of the system, equipment, material, or service, as well as the nature of the procurement (i.e., fixed price vs. cost, R&D vs. production, etc.). A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. Complex items have quality characteristics, not wholly visible in the end item, for which conformance must be established progressively through precise measurements, inspections, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operations. ~~Non-complex~~ Non-complex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements. Basically there are three levels of contract quality requirements.

a. ~~a.~~ *Contractor Inspection*. This simplest level, contractor inspection, is used for small purchases whereby the item being procured is not complex or critical. Using this requirement, the contractor is solely responsible for inspecting the item, and there is no government source inspection or involvement.

b. ~~b.~~ *Standard Inspection*. There is a wide variety of clauses to use depending upon the nature of the procurement. The appropriate standard inspection clause(s) should be used on all FAA procurements when the item procured warrants something greater than Contractor Inspection (i.e. other than non-complex small purchases). The various standard inspection clauses essentially require an inspection system acceptable to the government, provide for government inspection at source, and provide various administrative details such as handling unacceptable items.

c. ~~c.~~ *Higher-Level Contract Quality Requirements*. The final level is usually referred to as

"Higher-Level Contract Quality Requirements." This is used on those procurements that are for NAS systems and equipment whereby the product is sufficiently complex and critical to warrant a requirement for a complete Quality Assurance System approach rather than just a final inspection requirement. The Office of Acquisition and Contracting is using the AS9100 series standards on acquisitions when a higher-level quality requirement has been identified.

4 Acceptance Revised 7/2007

- a. ~~a.~~ Acceptance by a Government representative constitutes acknowledgment that the supplies or services conform with applicable contract requirements, subject to other terms and conditions of the contract. Acceptance is ordinarily evidenced by execution of an acceptance certificate on an inspection and acceptance form such as FAA Form 256, or by a commercial shipping document/packing list.
- b. ~~b.~~ Acceptance of supplies or services is the responsibility of the CO. This responsibility may be assigned to a cognizant Quality Reliability Officer (QRO) (e.g. for final acceptance at origin) or to a program office or regional representative (e.g. for final acceptance at destination). Acceptance by any of these persons is binding on the government.
- c. ~~e.~~ Each contract should specify the place of acceptance as well as other necessary acceptance provisions.
- d. ~~d.~~ A certificate of conformance may be used in certain instances instead of source inspection (whether the contract calls for final acceptance at source or destination) at the discretion of the CO when based upon the past performance of the contractor, and based upon the associated risk of receiving a defective item, it is concluded that a certificate of conformance is in the Government's best interest. In no case, however, must the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

5 Warranties Revised 7/2007

a. ~~a.~~ *General.*

(1) Warranties should provide:

- a. ~~(a)~~ A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the FAA; and
- b. ~~(b)~~ A stated period of time or use, or the occurrence of a specified event, after acceptance by the FAA to assert a contractual right for the correction of defects.

- (2) The benefits derived from a warranty must be commensurate with the cost of the warranty to the FAA.
- (3) In many cases, an item is customarily warranted in a trade, and the cost of the item will be the same whether or not a warranty is included. -In this case, it is ~~the~~ FAA's best interest to include such a warranty.
- (4) Special warranty clauses whose terms substantially differ from those typically offered by vendors to their customers will likely result in a higher contract price. The decision to include a special warranty provision in a contract is a business decision; however, the CO should consider the standard market practices for each commodity as well as the costs and benefits to FAA when making that decision. Special warranty clauses developed for use by the FAA when used for products or equipment use the date of receipt (rather than the date of acceptance) to start the warranty period. Incorporating an express warranty into a contract negates the remedies available under the Universal Commercial Code (UCC).
- (5) Warranty clauses must not limit the FAA's rights under an inspection clause in relation to latent defects, fraud, or gross mistakes that amount to fraud.

b. ~~b.~~ *Criteria.* In determining whether a warranty is appropriate for an acquisition, the CO must consider the following factors:

- (1) Nature and use of the supplies and service:
 - a. ~~(a)~~ Complexity and function;
 - b. ~~(b)~~ Degree of development;
 - c. ~~(c)~~ End use;
 - d. ~~(d)~~ Difficulty in detecting defects before acceptance; and
 - e. ~~(e)~~ Potential harm to the FAA if the item is defective.
- (2) Cost:
 - a. ~~(a)~~ Contractor's charge; and
 - b. ~~(b)~~ FAA cost of administering or enforcing the warranty.
- (3) *Administration and Enforcement.* The FAA's ability to enforce the warranty is essential to the effectiveness of the warranty. This ability to enforce the warranty depends on:
 - a. ~~(a)~~ Nature and complexity of the item;
 - b. ~~(b)~~ Location and intended use of the item;
 - c. ~~(c)~~ Estimated storage time for the item;
 - d. ~~(d)~~ Distance from the source of the item to the requiring activity; and
 - e. ~~(e)~~ Ability in tracing defects.

c. ~~e.~~ *Terms and conditions.* The CO must ensure warranties clearly state:

- (1) Exact nature of the item and its components that the contractor warrants;
- (2) Extent of the contractor's warranty, including all of the contractor's obligations to the FAA for breach of warranty;
- (3) Specific remedies available to the FAA; and
- (4) Scope and duration of the warranty.

d. ~~d.~~ *Commercial items.*

- (1) The CO should take advantage of commercial warranties, to include extended warranties, where appropriate and in the FAA's best interest, offered by the contractor for the repair and replacement of commercial items.
- (2) The UCC provides substantial warranty protection to buyers, and despite being applicable to the purchase of goods, can be used as a guide when drafting a warranty provision for the acquisition of services.

6 Government-Industry Data Exchange Program Revised 7/2007

Government-Industry Data Exchange Program (GIDEP) is a cooperative activity between Government and industry participants seeking to reduce or eliminate expenditure of time and money by making maximum use of existing knowledge. This program provides a means to exchange technical data essential in quality assurance, research, development, design, production, and the operational phase of the life cycle of systems and equipment. Primary objectives are to improve safety, reliability, quality, and logistics support. FAA participates in the GIDEP and encourages participation by major contractors of the systems, equipment, and material in the National Airspace System.

7 Considerations for Use of Clauses Revised 7/2007

Depending on the nature of the requirement, different AMS quality assurance clauses apply. Clause 3.10.4-1 is for use when only contractor inspection is needed. Clauses 3.10.4-2 through 3.10.4-12 are the various "standard inspection" clauses. Clause 3.10.4-13 is used in addition to the standard clauses when a higher-level QA system requirement is needed. Clause 3.10.4-14 is used with the standard and higher-level clauses when it is contemplated that a QRO will be assigned. Clause 3.10.4-15 is used when it is contemplated that a certificate of conformance (in lieu of source inspection) may be desired. Finally, clause 3.10.4-16 should be used in all fixed-price supply type contracts.

8 Construction Nonconforming Parts Revised 7/2007

- a. ~~a.~~ *Prevention of Construction Nonconforming Parts.* – The reviewing of construction design, specification and drawings by the requiring organization may be a useful tool in identifying potential nonconforming parts, including SUP. The contractor's inspection system is identified in clause 3.10.4-10(b).
- b. ~~b.~~ *Detection of ~~Nonconforming~~ Non-conforming Parts.* – The contractor's inspection system should detect nonconforming parts. As required in clause 3.10.4-10(b), the contractor maintains an adequate inspection system and performs inspections to ensure work performed under the contract conforms to contract requirement.
- c. ~~c.~~ *Segregating and Disposing ~~Nonconforming~~ Non-conforming Parts.* – The contractor's process should ensure that nonconforming parts, including SUP, are separated from acceptable parts and dispose as required by contract requirements. As required in clause 3.10.4-10 (f), the contractor segregates and removes rejected material from the premises.
- d. ~~d.~~ *Optional Reporting.*

- (1) SUP identified as nonconforming parts may be reported via the toll free FAA Hotline: 1-800-255-1111.

- (2) SUPs identified as nonconforming parts may also be reported to the FAA GIDEP Coordinator (AJA-432) for preparation of Agency Action Notices and Alerts.

B Clauses Revised 7/2007

[view contract clauses](#)

C Procurement Forms Revised 9/2021

[view procurement forms](#)

Data Item Description (DID)

Contract Deliverable Requirements List (CDRL)

~~**D Appendix**~~ Revised 7/2007

~~APPENDIX—Sample QRO designation letter~~

~~The basic text for a QRO designation letter is: Dear (company official):~~

~~In accordance with the enclosed letter, John Doe is the delegated Quality Reliability Officer (QRO) under Contract DTFA01-XX-X-XXXXX.~~

~~The QRO has no authority to issue directions or enter into agreements which may constitute new assignments of work or change the expressed terms, conditions or specifications of the contract.~~

~~Please note documentation to be furnished to the QRO as stipulated in the enclosed letter of designation.~~

~~You are cautioned against accepting oral or written instructions on quality matters from sources other than the Contracting Officer or from the Quality Reliability Officer.~~

~~At the time of issuance, you shall forward to the undersigned a copy of all correspondence you direct to the QRO.~~

~~Sincerely,~~

~~Contracting Officer~~

Enclosure

Document Name

D Procurement Samples Revised 9/2021

Document Name

E Procurement Templates Added 9/2021

Document Name

QRO Designation Letter

QRO Delegation Letter

F Procurement Tools and Resources Added 9/2021

Document Name

Section Revised: T3.10.6 – Termination of Contracts

Procurement Guidance - (~~7/2021~~9/2021)

T3.10.6 Termination of Contracts

A Termination of Contracts for Products, Services, and Construction Revised 9/2020

1 General Guidance Revised 9/2021

2 Termination for Convenience of the FAA

3 Termination for Default Revised 9/2021

4 Delinquency Notices

5 Definitions

B Termination of Real Property Contracts Added 9/2020

1 General Guidance Added 9/2020

2 Termination by the FAA ~~Added 9/2020~~ Revised 9/2021

3 Default ~~Added 9/2020~~ Revised 9/2021

C Clauses Revised 9/2020

D Procurement Forms Revised 9/20209/2021

E Procurement Samples Added 9/2021

F Procurement Templates Added 9/2021

G Procurement Tools and Resources Added 9/2021

T3.10.6 Termination of Contracts

A Termination for Products, Services, and Construction Revised 9/2020

1 General Guidance Revised 9/2021

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;
2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the contractor on how to proceed when a contract is terminated;
4. Establish a case file for each termination; retain pertinent documentation in the case file as a record of the activities related to the termination and settlement;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, distribution, and logistics;
6. Arrange inspection of completed items, as needed;
7. Obtain title to completed end items or termination inventory, as appropriate;
8. Initiate action to obtain, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract if it is in the best interest of the FAA to do so;
9. For construction contracts, direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
10. Examine settlement proposal and subcontract settlement proposals;
11. Recognize the subcontractor's final judgment against the contractor, if any, as a cost of the settlement;
12. Approve subcontract settlement, unless otherwise waived by the contracting officer;
13. Initiate audits on the settlement proposal for prime and subcontractors as deemed necessary to protect the interest of the FAA;
14. Negotiate settlement agreements, when applicable, with prime contractors;
15. Issue a CO determination if a settlement agreement cannot be reached;
16. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
17. Release excess funds as quickly as possible retaining sufficient funds to settle the termination.

c. Contractor responsibilities. The contractor will:

1. Cooperate with the CO in the termination;
2. Comply with the termination clause invoked;

3. Comply with direction of the CO consistent with termination clause;
4. Stop work immediately on the terminated contract, or portion thereof;
5. Terminate all subcontracts related to the terminated portion of the contract;
6. Stop placing subcontracts under the contract or terminated portion;
7. Settle outstanding liabilities and claims arising out of subcontract terminations, with prior approval by the contracting officer;
8. Dispose of termination inventory as instructed or approved by the CO;
9. Take necessary action to protect and preserve property in which the FAA has or may acquire an interest, or, as directed by the contracting officer;
10. Advise the contracting officer of any special circumstances affecting the termination, such as a subcontractor's legal proceedings or other commitments related to the termination;
11. Perform accounting review of subcontractor settlements;
12. Submit subcontractor settlement proposals for CO approval, as requested by the CO, and settle subcontracts without prior consent of the CO;
13. Submit a settlement proposal, supported by accounting data or other data required by the CO to review the proposal;
14. Execute a settlement agreement by negotiation as quickly as possible;
15. Perform continuing portion of the contract, if any;
16. Submit any request for an equitable adjustment of price with respect to the continuing portion.

d. Termination Notices.

The CO may terminate contracts by written notice to the contractor, furnishing copies to any known assignee, guarantor, or surety of the contractor. (See Procurement Samples for sample Termination for Convenience and Termination for Default notices). Termination amendments will also be in written form to the foregoing parties. The CO should transmit the notice in a way to establish the time of receipt by the contractor, such as certified mail with return receipt. The CO will invoke the appropriate termination clause, indicate date of termination, direct the contractor on how to proceed, provide disposition instructions for property in which the FAA has or will have an interest, and otherwise comply with the termination clause.

e. Settlements.

1. General.

Settlements may be used in both convenience and default terminations. A settlement should compensate the contractor promptly for the work done and, possibly, preparations made for the terminated portion(s) of the contract, including a reasonable allowance for profit, when appropriate. Termination clauses define costs that may be considered. Cost principles should govern assertions, negotiations, or cost determinations relevant to termination settlements under contracts with other than educational institutions, and be a guide in negotiation of settlements under contracts for experimental, developmental or research work with educational institutions. Business judgment is an important element, in addition to accounting principles, in achieving a fair settlement.

2. Termination Settlements.

When contracts are terminated, the CO should settle all outstanding matters in a fair and prompt manner. Settlements should consider rights and liabilities of the parties such as:

- a. Costs owed the contractor for delivered/accepted supplies or services;
- b. Contractor obligation to reimburse the FAA with interest for overpayments to the contractor;
- c. Materials acquired by the contractor for the contract that may necessitate contractor disposal;
- d. Rights of the parties;
- e. Construction site cleanup;
- f. Some settlement preparation cost.

3. Approaches.

The contracting officer may use various approaches to settle terminated contracts.

Approaches that may be used include:

- a. Negotiation,
- b. CO determination,
- c. Cost out under vouchers in a cost-reimbursement contract;
- d. By combination of methods.

4. Settlement Proposal.

The CO should provide the contractor explicit direction on the preparation of the settlement proposal. Contractors should prepare and submit to the CO a settlement proposal on the outstanding liabilities and obligations of the parties. The proposal may be the basis for a negotiated settlement agreement. The proposal should cover all cost elements including settlements with subcontractors and any proposed profit. ~~With the consent of the CO, the contractor may file proposals in successive steps covering separate portions of the contractor's costs. Such interim proposals should include all costs of a particular type, except as the CO may otherwise authorize.~~

5. Settlement by Negotiation.

Settlement by negotiation is the preferred method to arrive at a settlement agreement. The CO should document the settlement negotiation in a memorandum or similar documentation describing the principal elements of the settlement and include this as documentation in the termination file.

6. Settlement by determination.(Revised 06/2001)

- a. The CO should issue a determination to the contractor in instances where the FAA and the contractor cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause. The determination should state:
 - i. That it is the ~~Contracting Officer's~~CO's termination settlement determination, and
 - ii. That the amount due the contractor, if any, consistent with the termination clause and any cost principles affecting the contract. The CO should support his/her determination with schedules in sufficient detail to substantiate the basis and rationale for the amount.

- b. The contractor may file a dispute with Office of Dispute Resolution for Acquisition based upon the settlement determination of the Contracting Officer - see termination clauses and Contract Disputes clause at 3.9.1-1.
7. Settlement Agreement.

The settlement agreement should describe the elements of the settlement so that the obligations of the parties are clear and do not create any rights for the parties beyond those in existence before execution of the settlement agreement. The settlement agreement will be in the form of a contract modification.
8. No cost settlement.

The CO may execute a no-cost settlement agreement if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due ~~the~~to FAA under the contract.
9. Partial settlements.

Partial settlements are discouraged. The CO should attempt to settle all rights and liabilities of the parties under the terminated portion of the contract in one agreement. However, when a CO cannot promptly complete settlement under the terminated contract, he/she may enter a partial settlement reserving rights on the unresolved issues to a later time.
10. Settlement Conference.

The CO may hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the CO and after consulting with the contractor, principal subcontractors may be requested to attend. Topics that should be discussed at the conference and documented include-

 - a. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;
 - b. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;
 - c. Status of any continuing work;
 - d. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;
 - e. Names of subcontractors involved and the dates termination notices were issued to them;
 - f. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;
 - g. Arrangements for transfer of title and delivery to the FAA of any material required by the FAA;
 - h. General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;
 - i. Contractor accounting practices and preparation of SF 1439 (See Schedule of Accounting Information located in Procurement Forms).
 - j. Form in which to submit settlement proposals;
 - k. Accounting review of settlement proposals;
 - l. Any requirement for interim financing in the nature of partial payments;

- m. Tentative time schedule for negotiation of the settlement including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules to minimize impact upon employees affected adversely by the termination.
- 11. Settlement costs/profit. Settlement costs should be consistent with the termination clause invoked and the cost principles that may apply.
- 12. Settlement by determination. If the settlement is by determination and there is no appeal within the allowed time, the contractor should submit a voucher or invoice showing the amount finally determined due, less any portion previously paid; or there is an appeal, the contractor should submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

f. Payments.

- 1. Partial Payments. The CO may authorize partial payments on settlement proposals before settlement if the contractor requests them and the CO determines that it would not be contrary to the interest of the FAA.
- 2. Final Payments. After execution of a settlement agreement, the contractor should submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The CO should attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the CO for payment.
- 3. Under Construction Contracts. If there are any outstanding labor violations in the case of construction contracts, the CO should withhold an appropriate amount from the final payment pending resolution of the violations.

g. Interest.

The FAA should not pay interest on the amount due under a settlement agreement or a settlement by determination. The FAA may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Resolution of Protests and Disputes procedures. Interest will be at a rate set by the Secretary of the Treasury under 50 U.S.C. (App) 1215(b)(2).

2 Termination for Convenience of the FAA

The provisions of this section apply to contracts containing Clauses 3.10.6-1 through 3 and Alternates which permit termination for convenience of the FAA.

a. Fixed Price Contracts.

- 1. -Profit. The CO may use any reasonable method to arrive at a fair profit. The CO may allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profit is not allowed. Profit should not be allowed the contractor for material or services that, as of the effective date of

termination, have not been delivered by a subcontractor, regardless of the percentage of completion.

2. Adjustment for Loss. The CO should not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The CO should negotiate or determine the amount of loss and make an adjustment in the amount of settlement based upon the degree of expected loss.
3. The contracting officer should ensure that no portion of an increase in price is included in a termination settlement made or in process.
4. Completed end items. The CO should (a) have completed end items inspected and accepted if they comply with the contract and (b) determine which accepted items should be delivered under the contract. These items should not be included in the settlement proposal. If accepted items are not to be delivered, the contractor may include them in the settlement proposal at the contract price as adjusted to reduce by freight cost or to add disposal costs, etc. Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at the unit prices specified in the contract.
5. Equitable Adjustment After Partial Termination. Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract.

b. Cost Reimbursement Contracts.

1. Audit. The CO should obtain an audit on the settlement proposal unless only fee is proposed.
2. Final Settlement.
 - a. Settlements of cost reimbursable contracts should not provide for recovery of excess repurchase costs.
 - b. The settlement should not include costs that were disallowed or unallowed under the terms of the contract.
 - c. Settlement does not need to be based on agreement on every element if an overall settlement can be agreed to.
3. Partial Terminations. If the terminated portion is not severable, the settlement in a partial termination should be limited to a fee adjustment and reduction in estimated cost as well as other allowable costs associated with preparing a settlement proposal.
4. Fee. The CO should determine the fee adjustment in accordance with the contract, however, the fee is generally adjusted based upon percentage of completion.

3 Termination for Default Revised 9/2021

a. General.

1. Termination for default is the exercise of the FAA's contractual right to completely or partially terminate a contract by reason of the contractor's actual or anticipated failure to perform its contractual obligations. When the contracting officer has the right to terminate a contract for default, the total undelivered contract quantity, whether delinquent or not, may be terminated for default.

2. Procedures for default.

- (a) The Default clause covers situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, the contracting officer shall give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A [formattemplate](#) for a cure notice is located in FAA FAST under Procurement Templates ~~and Samples.~~
 - (b) If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A [formattemplate](#) for a show cause notice is located in FAA FAST under Procurement Templates ~~and Samples.~~
3. Options in Lieu of Termination for Default. The CO may consider alternatives other than termination for default if in the best interest of the FAA to do so. Prospective alternatives may be to terminate for the convenience of the FAA if the failure to perform was beyond the control of the contractor; consider a surety or guarantor to complete the work; allow the contractor to use a third party to perform. Other reasonable and viable alternatives may also be considered.
 4. The FAA may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see, for example Clause 3.10.6-4, Default (Fixed Price Supply and Service)).
 5. Damages. If a contract is terminated for default, or if a procedure in lieu of termination for default is followed, the contracting officer may consider FAA's entitlement to damages. Damages are in addition to repurchase costs, when repurchase costs are applicable.
 6. Sureties. Prior to terminating fixed price contracts for contractor default, the CO should notify sureties of the impending termination prior to issuing the actual termination notice. In addition, the contracting officer should consider proposals from sureties to complete the work.

b. Fixed-Price Contracts Terminated for Default.

1. FAA Rights and Obligations. Clauses 3.10.6-4 through 6 covering Termination for Default (Fixed Price) provide the FAA the right to terminate all or any part of a contract when the contractor:
 - a. Fails to make delivery or perform services according to contract schedule or
 - b. Fails to complete any material requirement of the contract within the time specified in the contract or

- c. Fails to make progress to a degree that this failure endangers performance of the contract or
- d. Fails to perform any other contract provision or
- e. Fails to meet contractual obligations.

The FAA is not liable for the contractor's costs on undelivered work and is entitled to repayment of payments to the contractor for undelivered work. The CO may direct the contractor to transfer title and deliver to the FAA completed supplies and manufacturing materials. The supplies and manufacturing materials transferred from the contractor to the FAA may be used in continuing the terminated contract work or for use under another contract.

2. The FAA should pay the contractor the contract price for any supplies or services completed and delivered, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials obtained by the contractor.
3. The FAA should be protected from overpayment that might result from failure to provide for the FAA's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the FAA has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:
 - a. (a) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.
 - b. (b) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.
 - c. (c) Obtain appropriate agreement by the FAA, the contractor, and lienors ensuring release of the FAA from any potential liability to the contractor or lienors.
 - d. (d) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the FAA's interest, but only if the measures in subparagraphs (d)(1), (2), and (3) above cannot be accomplished or are considered inadequate.
 - e. (e) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.
4. Repurchase Against Contractor's Account. When supplies or services are still required after termination for default, the contracting officer may repurchase the same or similar supplies or services against the contractor's account as soon as practicable. The repurchase must be at as reasonable a price as possible considering the quality required by the FAA and the time within which the supplies or services are required. Whenever practicable, the contracting officer should make necessary repurchase decisions before issuing the termination notice. If repurchase is made at a price higher than the price of the terminated supplies or services, the contracting officer must--after final payment of the repurchase contract-- make a written demand on the contractor for the excess amount, taking into account any increases or decreases in cost due to transportation charges, discounts, and other factors. The contractor is liable to the FAA for any excess costs incurred in acquiring supplies and services similar to those terminated for default, and any other damages, whether or not repurchase is made.

c. Contract Clause Cost Reimbursement Contracts Terminated for Default

Contract Clause 3.10.6-3 Termination (Cost Reimbursement) and Alternates provides the CO authority to terminate cost reimbursement contracts for default.

4 Delinquency Notices

The formats of the delinquency notices in this section may be used to satisfy the requirements of [T3.10.6.A.3](#). All notices will be sent with proof of delivery requested.

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a “Cure Notice” is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of “cure” remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the “Cure Notice” should not be issued. The “Cure Notice” may be in the following format:

You are notified that the Government considers your ____ [*specify the contractor’s failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the _____ [*insert clause title*] clause of this contract.

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the following “Show Cause Notice” may be used. It should be sent immediately upon expiration of the delivery period.

Since you have failed to ____ [*insert “perform Contract No. ____ within the time required by its terms,” or “cure the conditions endangering performance under Contract No. ____ as described to you in the Government’s letter of ____ (date)”*], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to ____ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

5 Definitions

a. ‘Claim,’ as used in this part, means the same as the language in Resolution of Protests and

Disputes.

- b. 'Continued portion of the contract,' as used in this part, means the portion of a partially terminated contract that the contractor must continue to perform.
- c. 'Effective date of termination' means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.
- d. 'Other work,' as used in this part, means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.
- e. 'Partial termination' means the termination of a part but not all, of the work that has not been completed and accepted under a contract.
- f. 'Settlement agreement,' as used in this part, means a written agreement in the form of an amendment to a contract settling all or a severable portion of a settlement proposal.
- g. 'Settlement proposal,' as used in this part, means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word 'claim' under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).
- h. 'Show cause' refers to a notice which the CO is required to issue prior to terminating a contract. The purpose of a show cause notice is to permit the contractor to present its defense against termination.
- i. 'Terminated portion of the contract' means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.
- j. 'Termination inventory' means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes FAA-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.
- k. 'Unsettled contract change' means any contract change or contract term for which a definitive modification is required but has not been executed.

B Termination of Real Property Contracts Added 9/2020

1 General Guidance Added 9/2020

a. The FAA termination requirements will:

1. Enable the FAA to establish contract requirements that protect the interests of the FAA;
2. Promote fair and rapid termination settlements;
3. Encourage settlement by agreement rather than by contracting officer's determination.

b. Contracting officer (CO) responsibilities. The CO will:

1. Select and include the appropriate termination clause(s) in contracts to provide the CO authority to terminate contracts for convenience, or for default;
2. Enforce provisions of termination clauses in a manner that is in the best interest of the FAA by terminating in whole or in part, for the convenience of the FAA or for contractor default;
3. Direct the vendor on how to proceed when a contract is terminated;
4. Ensure proper documentation is added to the official contract file;
5. Enlist assistance of individuals with special qualifications to assist in the termination in areas such as legal, accounting, etc.;
6. Direct action for site cleanup, protection of serviceable materials, removal of hazards, and any action necessary to leave a safe site;
7. Terminate utility contracts associated with leases that are not being renewed;
8. Negotiate agreements (tenant improvement costs, etc.), when applicable, with vendors;
9. Issue a CO determination if an agreement cannot be reached;
10. Reinstate contracts on a bilateral agreement basis when deemed in the best interest of the FAA to do so;
11. Release excess funds as quickly as possible retaining sufficient funds to settle the termination; and
12. Update final termination documentation in the real estate asset management system.

2 Termination by the FAA Added 9/2020 Revised 9/2021

- a. The CO may terminate contracts, at any time, in whole or in part, if the CO determines that termination is in the Government's best interest.
- b. Written notice of the termination must be provided to the vendor indicating the date of the termination, directing the vendor on how to proceed, and providing disposition instructions for property in which the FAA has or will have an interest.
- c. ~~AMS Clause 6.2.7~~The appropriate "Termination" ~~and any other applicable termination~~ clause(s) must be cited in all real estate contracts.
- d. In the event the Government terminates a contract, the vendor may recover the balance of any tenant improvement costs or an unamortized balance of the tenant improvement allowance from the Government, whichever amount is less, over the term of the contract. The Government will make a one-time, lump sum payment to the vendor to settle any tenant improvement costs in their entirety if the entire lease is terminated, or prorate, if any portion

thereof is cancelled.

- e. In the event a contract with a firm term is terminated prior to the end of the firm term, the FAA is contractually committed to make rental payments for the remainder of the firm term. (See T3.8.8.B.3 Firm Term Leases).

3 Default Added 9/2020 Revised 9/2021

Each of the following will ~~constitutes~~constitute a default by the Lessor:

- a. Failure to perform the work required to deliver the leased premises, ready for occupancy by the Government, within the time required by the contract;
- b. Failure to maintain, repair, operate or service the premises as specified, or failure to perform any other requirement of this contract as required, provided such failure remains uncured for a period of time as specified by the CO, following Vendor's receipt of written notice from the CO; or
- c. Repeated failure to comply with one or more requirements constitutes a default notwithstanding that one or all failures have been timely cured.

If default occurs, the CO may, by written notice, terminate the contract in whole or in part. The CO must include AMS Clause 6.3.3.31 ~~“2.5-1 “Termination by~~ “2.5-1 “Termination by Default ~~by Lessor”~~ in the contract.

C Clauses Revised 9/2020

[view contract clauses](#)

D Procurement Forms Revised 9/2020 9/2021

[view procurement forms](#)

<u>Document Name</u>
Schedule of Accounting Information (SF 1439)

E Procurement Samples Added 9/2021

<u>Document Name</u>
Termination for Default
Termination for Convenience

F Procurement Templates Added 9/2021

<u>Document Name</u>
<u>Cure Notice</u>
<u>Show Cause Notice</u>

G Procurement Tools and Resources Added 9/2021

<u>Document Name</u>
